

Commission of Inquiry
Into the Wrongful
Conviction of David Milgaard
before
THE HONOURABLE MR. JUSTICE
EDWARD P. MacCALLUM

Transcript of Proceedings

and

Testimony before the Commission
sitting at the
TCU Place at
Saskatoon, Saskatchewan

On Thursday, June 15th, 2006

Volume 164

Inquiry Proceedings



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Transcript of Proceedings

(Reconvened at 9:02 a.m.)

COMMISSIONER MacCALLUM: Good morning.

MR. HARDY: Good morning, Mr. Commissioner.

09:02 5 We're ready to proceed with our first witness
6 this morning, John Quinn. Ms. Monar Enweani will
7 be leading Mr. Quinn's evidence.

8 I just wanted to give you and
9 the parties the heads up that following Mr.
09:02 10 Quinn's evidence, which should be completed this
11 morning, we will resume the shorter video clips
12 that we've been watching. We have approximately
13 two hours of those left and assuming we still
14 have time today, we'll then move on to a longer
09:02 15 video clip, *The David Milgaard Story*, which was a
16 Global production played in late 1992 and that's
17 approximately an hour and a half long.

18 JOHN GORDON QUINN, sworn:

19 BY MS. MONAR ENWEANI:

09:03 20 Q Good morning, Mr. Quinn.

21 A Good morning.

22 Q Thank you for attending today to give evidence. I
23 understand that you presently reside in Prince
24 Albert?

09:03 25 A That's correct.



1 Q And you are a retired member of the Saskatoon
2 Police Service?

3 A Yes.

4 Q I have a summary of records of service that the
09:03 5 Commission was provided with by the Saskatoon
6 police, it's doc. ID 325555 at page 6. This
7 document lists your record of service and it
8 indicates that you started with the Saskatoon
9 Police Department on January 2nd, 1964; is that
09:04 10 correct?

11 A That's correct.

12 Q And can you tell me when you retired from the
13 Saskatoon Police Force?

14 A I retired from the Saskatoon Police Department on
09:04 15 December the 15th, 1998.

16 Q All right. And after your retirement, did you
17 take on any other paid positions?

18 A I went to Prince Albert and I was the chief of
19 police in Prince Albert for four years and eight
09:04 20 months.

21 Q And then following that work, did you cease police
22 work?

23 A I did.

24 Q And you are now presently retired?

09:04 25 A I am.



1 Q Just turning back to your record of service, I
2 note that July 2nd, 1967 you were a first class
3 constable and you remained so until October 7th of
4 1970. Of course we know that Gail Miller was
09:04 5 murdered on January 31st of 1969. Can you give me
6 some idea of what your duties were as a first
7 class constable?

8 A In that time period I was assigned to the traffic
9 division of the Saskatoon Police Service
09:05 10 investigating traffic accidents, doing traffic
11 enforcement, duties related to that line of work.

12 Q All right. And I understand that later in or
13 about 1990 you had some involvement with the
14 Milgaard matter and so from your record of service
09:05 15 it appears that on November 1st of '89 you were
16 promoted to inspector?

17 A That's correct.

18 Q And the service record indicates inspector,
19 patrol?

09:05 20 A That's not quite accurate. Initially I was
21 assigned to the patrol division. I spent one day
22 in the patrol division and was then assigned over
23 to the CID section which is the Criminal
24 Investigation Division.

09:05 25 Q All right. Can you give me a general description



1 of what type of duties you would have had as
2 inspector in Criminal Investigation Division?

09:06 3 A I was basically overseeing the plain-clothes
4 sections which include the general investigation
5 section, the major crime section, morality
6 division, the NCIU, which was the National
7 Criminal Intelligence Unit, the youth division,
8 all plain-clothes sections, and my responsibility
9 was to process correspondence for them to make
09:06 10 sure that they were on -- I guess review their
11 files or major files to do correspondence for the
12 sections and to I guess assist the superintendent
13 in charge and to provide any assistance to them in
14 their, in the daily duties of the plain-clothes
09:07 15 divisions.

16 Q All right. So that would involve then management
17 and review of happenings on major files?

18 A Right.

19 Q All right. And then I note that on October 14th
09:07 20 of 1991 you were transferred to internal
21 investigations, and was that a promotion or a
22 lateral move?

23 A It was a lateral move.

24 Q And can you tell me how your duties changed?

09:07 25 A The internal investigation section is responsible



1 for reviewing or investigating public complaints
2 against police officers. It's also responsible
3 for investigating internal disciplinary matters or
4 processing the internal disciplinary matters. I
09:07 5 worked in close co-operation with the complaints
6 investigator's office, that's part of the
7 provincial Police Commission, and with their
8 investigators.

9 Q The Saskatchewan Police Commission?

09:07 10 A That's correct.

11 Q All right. And those were your primary
12 responsibilities?

13 A Yes.

14 Q All right. Do you recall, Mr. Quinn, if you had
09:08 15 any involvement in the Gail Miller murder
16 investigation in 1969?

17 A I wasn't involved in the actual investigation. I
18 think in the file there is one report that was
19 related to myself on some information I had
09:08 20 received from a lady that lived on 110th Street in
21 Saskatoon and it was regarding a suspicious auto
22 that she had observed, what she believed was
23 trying to pick up ladies or nurses, and I left a
24 handwritten report at that time which was
09:08 25 processed to the chief and it eventually found its



1 way onto the Gail Miller investigation.

2 Q If we could bring up 009218, this would be the
3 handwritten note that you just mentioned?

4 A That's correct.

09:09 5 Q And it appears that at the top of the document the
6 information was directed to Superintendent Wood;
7 is that correct?

8 A Yes, I believe that's the name. It's kind of
9 smudged there, but my recollection is that
09:09 10 Superintendent Wood was in charge of the CID
11 sections at that time.

12 Q All right. And was it usual for you to report
13 information of this nature in the form of a letter
14 to the chief?

09:09 15 A That was one of the methods that you could put
16 information forward. It was possible if it had
17 been related directly to a specific investigation,
18 it would have been given that occurrence number.

19 Q Okay.

09:10 20 A And I believe from reviewing it now, there was no
21 specific file that I was directing it to, it was
22 just information that I had received from this
23 information.

24 Q So at the time it wasn't given to you in the
09:10 25 context of a piece of information that might



1 assist in the Gail Miller murder investigation?

2 A Not from my recollection and not from what I read
3 in the report that I had submitted.

4 Q All right. If we could see 025168, this is an
09:10 5 investigation report dated May 7th, 1969, and it's
6 authored by Detective Reid. I'll just read the
7 first part of it:

8 "In regards to a report left
9 by Cst. John Quinn on May 1/69 in
09:10 10 relation to a suspicious auto S.L. 37772
11 for the current year and listed to Ivan
12 Kresak as to it's activities in the
13 Sutherland area, particularly between
14 the times of 2:30 and 3:00.

09:11 15 Since receiving this report,
16 observations and surveillances were
17 conducted..."

18 So it appears that the information you provided
19 was followed up on by Detective Reid. Did you
09:11 20 ever have any discussions with Detective Reid
21 about this?

22 A Okay, I finally got it on the screen here.

23 Q Oh, sorry.

24 A I don't recall ever talking to, I believe it was
09:11 25 Sergeant Reid at the time, or Detective Reid at



1 the time, that the report was left, but from that
2 report obviously that information I had supplied
3 was followed up.

4 Q Okay. In 1969 as a member of the Saskatoon Police
09:11 5 Department, were you aware that David Milgaard was
6 arrested and then subsequently convicted for the
7 murder of Gail Miller?

8 A Yes, I was.

9 Q All right. And in the years following 1969, let's
09:11 10 say through to 1989, did you have any involvement
11 in the Gail Miller matter at all?

12 A No.

13 Q And during that time did anything come to your
14 attention that would cause you to question whether
09:12 15 David Milgaard was properly convicted?

16 A No, nothing.

17 Q If I can turn your mind then to 1990. I
18 understand that your role in the police service at
19 that time was as inspector in the Criminal
09:12 20 Investigation Division. Do you recall becoming
21 involved in the Milgaard matter in 1990?

22 A Yes, I do.

23 Q And can you briefly explain to us --

24 A It was in the early, earlier part of 1990, I
09:12 25 believe around March we were contacted by the,



1 initially I think by the solicitor general's
2 department and I think that correspondence came
3 through Deputy Chief Montague. Subsequently there
4 was a meeting that was held in that month with Mr.
09:13 5 Williams, Eugene Williams from the solicitor
6 general's department and I believe it was Sergeant
7 Rick Pearson from the RCMP and at that time the
8 discussion centred around some information that
9 Mr. Williams was pursuing in relationship, I
09:13 10 believe it was, to an application that had been
11 submitted by David Milgaard's legal
12 representatives, and Mr. Williams had been tasked
13 with the job of carrying out some investigations
14 into those matters and had got ahold of the RCMP
09:13 15 and they were going to assist him and they were
16 one of the liaison with the Saskatoon Police
17 Service to assist them in whatever means they
18 needed at that time.

19 Q And I take it that you were then the liaison for
09:14 20 Sergeant Pearson?

21 A Yes, I was, and Mr. Williams.

22 Q All right. If I could turn you to document, it's
23 178736, this appears to be a letter from David
24 Milgaard's lawyers directed to Mr. Eugene Williams
09:14 25 at the Federal Department of Justice. I'll just



1 read briefly from this letter:

2 "This letter will confirm the
3 substance of our telephone conversation
4 on February 28th, 1990. Mr. Wolch was
09:14 5 contacted on Monday, February 26th, 1990
6 by an individual who identified himself
7 as Sidney Wilson. This individual
8 refused to provide any details of his
9 personal identity and we do not have a
09:14 10 telephone number or anything of that
11 nature to identify him. Mr. Wilson
12 informed us that he knew the true
13 identity of the killer of Gail Miller.
14 He advised that the true killer's name
09:15 15 was Larry Fisher, an individual who was
16 apparently from North Battleford,
17 Saskatchewan. Furthermore, Mr. Wilson
18 advised that Fisher had arrived at home
19 on the morning of January 31st, 1969,
09:15 20 covered with blood and that Fisher's
21 wife had seen this. Fisher's wife then
22 apparently heard of the murder later
23 that day and concluded that Fisher may
24 have had some involvement. Fisher's
09:15 25 wife then apparently told Wilson, who



1 claims that he went to the police a
2 number of years ago with this
3 information. We further understand from
4 Wilson that Larry Fisher is currently
09:15 5 imprisoned serving a sentence arising
6 from a rape or murder or both.

7 Our information is that an
8 individual named Larry Fisher and his
9 wife rented the basement portion of the
09:15 10 Cadrain residence in Saskatoon for a
11 period covering the date of the death of
12 Gail Miller.

13 Obviously, this could be very
14 important in the development of the
09:15 15 Milgaard s. 690 application, and one
16 which we respectfully believe ought to
17 be fully investigated."

18 If we could now turn to page 3 of that same
19 document. Mr. Quinn, we know from the document
09:16 20 that immediately follows this one that this is
21 most likely a note authored by Deputy Chief
22 Montague in relation to a telephone conversation
23 he has with Eugene Williams. I'll just read from
24 this briefly and then I will ask you a few
09:16 25 questions.



1 "03 01, at 0930 hours
2 returned call to Eugene Williams,
3 Justice Department, Ottawa."

4 Continuing down to the bottom of the document, it
09:16 5 reads:

6 "Williams will be making a
7 formal inquiry by letter, and requests
8 that our file be reviewed to determine
9 any reference to the information Wilson
09:16 10 claims to have provided.

11 90 03 01 Gail Miller Murder
12 File assigned to Constable Farion,
13 Analyst, for review and perhaps for
14 indexing at a later time."

09:17 15 Were you familiar with Constable Farion?

16 A Yes. Constable Farion, at that time, was the
17 criminal analyst for the Saskatoon Police Service,
18 and he -- his -- part of his responsibilities was
19 to review ongoing investigations and provide some
09:17 20 kind of -- provide a -- whether there was any
21 trends, similarities between the offences, and he
22 was also involved in reviewing older -- old files
23 and going back into I guess what we would call
24 cold investigations.

09:17 25 Q Okay. If we could turn to page 4, if you will



1 just bear with me, I'll read this letter and then
2 we'll come to your involvement in the matter.

3 This is the March 1st, 1990 letter from Eugene
4 Williams to Deputy Chief Montague following up on
09:18 5 the earlier conversation. The letter reads:

6 "I am writing to confirm the
7 substance of our telephone conversation
8 of March 1, 1990. I sought to identify
9 the person, whose assistance I should
09:18 10 obtain, to investigate certain facts
11 concerning David Milgaard's application
12 for mercy, pursuant to section 690 of
13 the Criminal Code. Mr. Milgaard who is
14 serving a life sentence, is an inmate of
09:18 15 Stony Mountain institution.

16 To obtain a better
17 understanding why the requests which
18 follow are being made, some background
19 information is needed. David Milgaard
09:18 20 applied to the Minister of Justice
21 seeking among other things, a new trial.
22 He contends that he was wrongfully
23 convicted in January 1970 of the
24 non-capital murder of Gail Miller, who
09:18 25 resided in Saskatoon when she was



1 murdered. This application spurred an
2 investigation into the grounds for
3 review which were advanced in the
4 application.

09:18 5 Recently, the Department of
6 Justice was advised by Mr. Milgaard's
7 counsel, David Asper, that Mr. Sidney
8 Wilson, address unknown, had identified
9 Larry Fisher, as the true killer of Gail
09:19 10 Miller. Further, Mr. Wilson apparently
11 went to the police 'a number of years
12 ago' and provided the police with this
13 information.

14 Mr. Asper has also informed me
09:19 15 that Linda Fisher, who was described to
16 me as the wife of Larry Fisher, was
17 interviewed by the Saskatoon police
18 force in connection with the Gail Miller
19 murder investigation.

09:19 20 This case has stimulated
21 widespread public and media interest.
22 As a result every investigative step
23 may, at some future date, be subject to
24 careful scrutiny. Accordingly, to avoid
09:19 25 any future suggestion of a conflict of



1 interest, by the organization involved
2 in determining the veracity of this
3 recent information, I have sought and
4 obtained the assistance of the Royal
09:19 5 Canadian Mounted Police, to examine a
6 number of these claims, some of which
7 are contained in the attached letter
8 dated February 28, 1990. I understand
9 that, unlike the Saskatoon police, that
09:19 10 organization played a minor role in the
11 conduct of the Gail Miller murder
12 investigation in 1969.

13 However, there are certain
14 factual assertions which can only be
09:20 15 confirmed by the Saskatoon Police Force.
16 Accordingly I am writing to obtain your
17 assistance in determining the following:

18 ..."

19 He sets out four questions:

09:20 20 "1. Did the Saskatoon Police Force interview
21 Linda Fisher during the murder
22 investigation of Gail Miller, or at
23 anytime thereafter in relation to
24 Ms. Miller's death?

09:20 25 2. If so, what information did Ms. Fisher



1 provide?

2 3. Can it be determined whether Sidney
3 Wilson, or anyone else, contacted the
4 Saskatoon Police Force to advise that
09:20 5 Larry Fisher was the true killer of Gail
6 Miller?

7 4. During the Gail Miller murder
8 investigation Albert Henry Cadrain,
9 (Shorty), who later testified at the
09:20 10 Milgaard trial, was interviewed by the
11 Saskatoon Police Force. Is there a
12 record of that interview? If so, does
13 it disclose whether Mr. Cadrain
14 identified the individuals who then
09:20 15 resided at 3334 Avenue 'O' South in
16 Saskatoon? Did Mr. Cadrain identify
17 Larry Fisher as a resident or tenant in
18 his dwelling during his discussions with
19 police."

09:21 20 If I could then turn your attention to page 7 of
21 178736. This appears to be a memorandum from
22 Deputy Chief Montague addressed to you, and it
23 reads:

24 "Please have Constable Farion
09:21 25 review the Gail Miller Murder File and



1 provide answers to the questions posed
2 by Mr. Eugene Williams, Department of
3 Justice Canada.

4 For the purpose of fully
09:21 5 responding to question number 1, it will
6 be necessary for Constable Farion to
7 locate the notebooks for the former
8 Inspector Parker to determine any
9 follow-up on the statement provided by
09:21 10 Linda Lillian Fisher August 28, 1980."

11 As far as you recall, is this March 7th, 1990
12 memo the first time in 1990 that you would have
13 become aware of the request by Federal Justice
14 for assistance?

09:22 15 A I believe it would be. It would be the first,
16 yes.

17 Q All right. And so I assume that, at this point,
18 Mr. Williams' letter would have come to your
19 attention?

09:22 20 A It would have come to my attention, I guess,
21 through this memo that Deputy Chief Montague had
22 sent down.

23 Q All right. And then can you tell me what you
24 would have proceeded to do?

09:22 25 A I would -- at that particular time I had



1 instructed Constable Farion to follow up on the
2 requests for the information that Mr. Williams
3 wanted, and then to provide a report back on what
4 his findings were, to myself, or directed up to
09:22 5 the administration, to Deputy Chief Montague.

6 Q All right. So, essentially, he was going to
7 conduct the review and simply report back to you?

8 A Right.

9 Q Okay. If I could turn your attention to 105320.
09:23 10 This is a memorandum dated March 15th, 1990, it's
11 from Constable Farion, to Joseph Penkala, chief of
12 police, to your attention. It reads:

13 "As per the request by Deputy
14 Chief Montague I have reviewed the Gail
09:23 15 Miller Murder File and attached are the
16 answers to the questions posed by Mr.
17 Eugene Williams, Department of Justice
18 Canada. The notebooks of former
19 Inspector Parker were located and
09:23 20 checked by myself and you and they
21 contain no further information
22 pertaining to Linda Lillian Fisher's
23 statement of August 28th, 1990.
24 Therefore, the responses I have provided
09:23 25 are based on all the documented



1 information contained in the file which
2 I was given to review."

3 So I understand this to be Constable Farion's
4 report to you. Do you have any recollection of
09:24 5 being involved in locating or reviewing Parker's
6 notebooks?

7 A I can recall, at some point, trying to locate a
8 number of notebooks from retired members, and
9 retired Staff Sergeant Parker's notebooks likely
09:24 10 would have been one of them, and I -- my
11 recollection is that in this particular case,
12 depending where the notebooks were, it may have
13 been necessary for me to access them, because of
14 the -- where they were stored, as they were not a
09:24 15 common area where all the members had access to,
16 and so that would have been one of the reasons I
17 would have been involved with Farion in reviewing
18 those.

19 Q All right. I take it that you would have read the
09:25 20 responses that Constable Farion prepared in
21 response to Mr. Williams' letter?

22 A Yes.

23 Q And, essentially, would you have reviewed them to
24 ensure that they adequately addressed the
09:25 25 questions posed?



1 A That would be one purpose. The other one was to
2 make sure that we had answered all the -- all his
3 questions, or at least had given an explanation to
4 the questions that Mr. Williams had answered -- or
09:25 5 asked in his letter.

6 Q All right. And would this information, then, have
7 been forwarded by you on to Deputy Chief Montague?

8 A It would have gone up to his office, or
9 addressed -- the way it was addressed was to the
09:25 10 chief, but it would have gone to, in the
11 administration, and eventually to Montague.

12 Q All right. If we could see document 155226. This
13 is a letter dated March 22nd, 1990, and it would
14 appear to be the formal reply by Deputy Chief
09:26 15 Montague to Mr. Williams' letter, and it reads:

16 "In answer to your letter of
17 March 1, 1990, I provide the attached
18 information drawn from our file 69-641,
19 which relates to the murder of Gail
09:26 20 Miller January 31, 1969.

21 The statement taken from Linda
22 Lillian Fisher by Inspector K. Wagner
23 August 28, 1980, appears to have been
24 referred to Staff Sergeant J. Parker.
09:26 25 We have not, however, located any report



1 of a follow-up investigation and have
2 not been able to contact Parker, who is
3 now retired. Ken Wagner is now a Deputy
4 Chief with this Department."

09:26 5 So this letter indicates to Mr. Williams that
6 there was no follow-up to Linda Fisher's 1980
7 statement done by Ken Wagner, and that would have
8 been the conclusion reached as a result of
9 reviewing Parker's notebooks?

09:27 10 A Umm, partially from maybe reviewing his notebooks,
11 but possibly from reviewing the file.

12 Q All right. And the letter makes reference to the
13 fact that you had not been able to contact Parker;
14 do you recall what kind of efforts were made to
09:27 15 contact Parker at that time?

16 A I don't recall specific requests, but I would
17 suggest that he was retired, and he had been
18 living in Saskatoon, but I believe there was a
19 period of time there where he was out of the city,
09:27 20 and I believe there was some health issues that he
21 was dealing with with his wife, and so I'm not too
22 sure whether it was basically making a phone call
23 or somebody going over to his residence, but I do
24 know that, at that time, they weren't able to
09:28 25 locate him.



1 Q Okay. I'm just going to turn your attention
2 briefly to the responses that were provided to Mr.
3 Williams, just so we have some context of what
4 kind of information was given at this time. I'm
09:28 5 looking at 155226, page 3. In response to the
6 first question:

7 "Did the Saskatoon Police
8 Force interview Linda Fisher during the
9 murder investigation of Gail Miller, or
09:28 10 at anytime thereafter in relation to
11 Ms. Miller's Death?"

12 The answer is:

13 "There is no documented
14 information to indicate that Linda
09:28 15 Fisher was interviewed during this
16 investigation; however, a statement was
17 taken from her on August 28, 1980 by
18 then, Inspector K. Wagner, in relation
19 to this file."

09:28 20 Question number 2:

21 "If so, what information did
22 Ms. Fisher provide?"

23 The answer is simply a summary of the information
24 that was contained in Mrs. Fisher's statement.

09:29 25 Turn to question 3:



1 "Can it be determined whether
2 Sidney Wilson, or anyone else, contacted
3 the Saskatoon Police Force to advise
4 that Larry Fisher was the true killer of
09:29 5 Gail Miller?"

6 The response is:

7 "There is no documented information in
8 the file to indicate that a Sydney
9 Wilson or anyone else contacted our
09:29 10 department to advise that Larry Fisher
11 was responsible for this homicide. The
12 only reference to a Larry Fisher
13 concerns a brief interview done with him
14 by Detective McCorrison at 6:49 a.m. on
09:29 15 February 5, 1969. Larry Fisher was
16 checked while on his way to work and
17 provided his address as 334 Avenue O
18 South, Saskatoon."

19 And I'll just pause there for a minute. It
09:29 20 appears, at this time, what you were being asked
21 for by Mr. Williams primarily was to review the
22 actual Gail Miller murder file and determine any
23 information relating to Larry Fisher within that
24 particular file?

09:30 25 A Yes.



1 Q Is that correct?

2 A That would be correct, yes.

3 Q Okay. And at this time, at least, Mr. Williams'
4 March 1st, 1990 letter doesn't contain a request
09:30 5 for the police to make any other kind of inquiries
6 about records of Larry Fisher outside of the Gail
7 Miller murder file?

8 A Not from his letter, no.

9 Q No? All right. Now if I could turn you to
09:30 10 document 004906, and I'm looking at page 5. For
11 your information, this document is an
12 investigation report prepared by Rick Pearson, and
13 this report would eventually have made its way to
14 Mr. Williams. It appears, from Mr. Pearson's
09:30 15 report, that there was a meeting at the Saskatoon
16 Police Department on May 23rd, 1990, and I'll just
17 read paragraph (j) for you:

18 "On 90 Mar 23, Mr. Williams and myself
19 met at the Bessborough Hotel, Saskatoon,
09:31 20 for the purpose of exchanging
21 information on this file. Later this
22 same date Mr. Williams and myself met
23 with Saskatoon City Police Chief
24 Penkala, Deputy Chief Montague, Supt.
09:31 25 McCorrison, and Insp. Quinn. The



1 purpose of our meeting was fully
2 explained and complete courtesy and
3 cooperation was extended, and I was
4 given complete access to the police
09:31 5 investigation they conducted into this
6 murder some 20 years previous. All in
7 attendance at the meeting agreed that it
8 would be more appropriate for certain
9 questions to be answered by a member of
09:31 10 an outside agency, in view of the
11 potential publicity this may have at a
12 later date."

13 Do you have any recollection, independent
14 recollection, of this meeting?

09:31 15 A I recall a meeting, I think I made reference to it
16 earlier, I wasn't -- couldn't recall exactly who
17 was all at the meeting but that is likely
18 accurate.

19 Q All right. And you were included in the meeting
09:32 20 because you had been designated as a liaison
21 person for --

22 A I think that, prior to that meeting, I had been
23 advised by Deputy Chief Montague to be that
24 person, or be involved in it as a contact person
09:32 25 for Mr. -- I guess Mr. Williams and Sergeant



1 Pearson.

2 Q All right. And the manner in which Mr. Pearson
3 describes the meeting; does that fit with your
4 recollection of the meeting?

09:32 5 A Yes.

6 Q And the purpose of it?

7 A Yes.

8 Q Can you recall if, at this time, there was a
9 request made of the police to conduct a search for
09:32 10 any police records regarding Larry Fisher?

11 A I don't recall any specific requests in that
12 regards at that time.

13 Q If I could turn to page 9 of this document, and
14 paragraph 4, Mr. Pearson writes:

09:33 15 "... ongoing review is being made of the
16 Saskatoon City Police file in the event
17 there is additional information which
18 may assist in providing answers to the
19 suspicion that Larry Fisher is
09:33 20 responsible for the death of Gail
21 Miller."

22 Mr. Pearson, I take it, was attending at the
23 police station on occasion to review the file?

24 A We were in the process, if this is from March of
09:33 25 that year, we were in a process of indexing the



1 Gail Miller murder investigation file which had
2 been stored in our vault at the police station
3 for, obviously, a large number of years. It had
4 never been, I guess, processed or indexed up to
09:34 5 this particular date. And what I mean by that is
6 that there were a number of names that would have
7 been in that file that would have never appeared
8 on our -- in our criminal records index cards,
9 because they were either witnesses or -- so one of
09:34 10 the purposes, when we had this request from Mr.
11 Williams, was to index the file in order so it was
12 easier for Mr. Williams or Sergeant Pearson to be
13 able to go through the file and look, if they were
14 looking for a particular individual, look at the
09:34 15 index system in there and then go right to that
16 particular page. So that's what we were in the
17 process of doing at that particular time, as well
18 as following up on any requests that would have
19 come in regarding information.

09:35 20 Q All right. And I think omitted to give you the
21 date of this investigation report, but it is from
22 April of 1990, so it would appear that time frame
23 fits?

24 A Right, we would have been well under way on
09:35 25 indexing the file by that time.



1 Q Okay. So I take it, then, when Mr. Pearson
2 started to review the file, it existed in an
3 unorganized state?

4 A I would say that it was unorganized in the fact
09:35 5 that, if you were looking for a particular report,
6 you had no idea where it was in the --
7 relationship to that file. There was -- they
8 weren't put in any kind of, what do I say,
9 particular order.

09:35 10 Q All right. And you were in the process of
11 indexing it; is that something that you oversaw?

12 A I had directed, part of it was through, I guess
13 with Farion, but also with one of the civilian
14 clerks, Myrna Gibson, and their task was to
09:36 15 organize the file and put it in some semblance of
16 order, along with the names, but divided into
17 investigation reports, ident reports, the --
18 obviously the original occurrence, but statements
19 and anything that was miscellaneous, could be
09:36 20 investigators notes, etcetera. I think, when we
21 ended up at the end of the process, it was six
22 binders of documented matters related to the
23 Miller investigation and one volume that was
24 related to the indexing itself.

09:36 25 Q And I take it that the instructions were that



1 everything that was in the Milgaard file would be
2 organized and then included in this set of
3 binders?

4 A That's correct.

09:36 5 Q All right. Nothing was omitted, --

6 A No.

7 Q -- left out?

8 A If it was -- if it didn't fall into, say, an
9 investigation category or into something like
09:37 10 that, it was put in the miscellaneous binder, or I
11 shouldn't say it's the miscellaneous binder but
12 that's -- it would be put into that sixth binder,
13 I guess, that would include the investigator's
14 notes, etcetera.

09:37 15 Q Okay. If I could turn your attention to document
16 105648. This is a March 26th, 1990 letter from
17 Eugene Williams to Deputy Chief Montague, it
18 reads:

19 "Thank you for your letter of
09:37 20 March 22, 1990 and its enclosed
21 attachment. The responses fully
22 answered my previous request. You were
23 kind to respond in such a timely fashion
24 and I wanted to thank you and to let you
09:37 25 know that I appreciate the efforts by



1 you and your staff in doing so."

2 And it would appear from this letter that there
3 were no outstanding requests from the federal
4 Department of Justice of the Saskatoon Police
09:38 5 Service at that -- at this time; is that fair to
6 conclude?

7 A Yes.

8 Q If I could next turn you to document 056743. This
9 is -- I'm sorry, I'm at page 20, and these are
09:38 10 typed notes that were prepared by Mr. Pearson.
11 April 5th, 1990 he notes:

12 "Called Insp. Quinn and
13 arranged to attend City Police again for
14 file review. Will contact Supt.
09:38 15 McCorrison and update him on my
16 investigation."

17 And then on April 6th of 1990 he writes:

18 "I contact Deputy Chief
19 Montague of City Police and arranged to
09:39 20 attend their office at 1100 hrs. this
21 date to review file material on the
22 Miller case."

23 "I attended the City Police,
24 met with Insp. Simpson and Deputy
09:39 25 Montague, then I reviewed the file



1 material and took notes. At this time
2 Myrna, one of the stenos, also present
3 and going through the file and indexing
4 same."

09:39 5 This is what you just previously told us about
6 the file being organized; is that correct?

7 A Right, correct.

8 Q All right. If I could refer you to page 35 of
9 056743. This, again, is Sergeant Pearson's typed
09:39 10 notes, and I'm looking at the entry for June 7th
11 of 1990, and I'll read the three paragraphs
12 starting at paragraph 156:

13 "Returned a telephone call to
14 Mr. Williams, who indicated he had
09:40 15 spoken with Chief Penkala of Saskatoon
16 City Police yesterday, requesting file
17 material and notes of the interview that
18 Wilson had with the investigators.
19 Indications are that Wilson was
09:40 20 interviewed first by the RCMP Insp.
21 Riddell and then two Saskatoon members
22 attended Regina and escorted Wilson to
23 Saskatoon, where he was further
24 interviewed by City Police, possibly by
09:40 25 John Parker and Raymond Mackie. Mr.



1 Williams is stating that Wilson has
2 recently provided a statement recanting
3 his original testimony by saying there
4 was no blood on Milgaard's pants as far
09:40 5 as he (Wilson) can recollect. The
6 suggestion is being made by Wilson that
7 the police convinced him of what he saw.
8 Wilson is also denying seeing a maroon
9 handled paring knife on Milgaard prior
09:40 10 to the murder, Wilson saying that the
11 detectives at the City Police pressured
12 him into saying he saw Milgaard with the
13 maroon knife. Wilson is also now
14 denying that John was hysterical when
09:41 15 they returned to the vehicle at the time
16 of Miller's murder. Wilson is also
17 denying Milgaard confessed to killing a
18 girl in Saskatoon, or to seeing a purse
19 thrown the garbage. Mr. Williams is
09:41 20 also advising that Wilson is now stating
21 he was heavily involved in drugs at the
22 time and now mentally stable and
23 believes he was manipulated by the
24 police into believing his own lies.
09:41 25 Wilson is also denying that he separated



1 from Milgaard while in Saskatoon.
2 Wilson has no recollection of getting
3 stuck or of seeing a ladies' cosmetic
4 compact in the car while en route to
5 Alberta.

6 Williams wishes to attend
7 Saskatoon on June 12th for the purpose
8 of reviewing police file material and
9 interviewing police investigators, prior
09:41 10 to taking a legal deposition from Mr.
11 Wilson. I have this arranged through
12 City Police Insp. John Quinn.

13 I contacted Insp. Quinn, who
14 assured me the file would be available
09:42 15 for Mr. Williams when he arrived."

16 Do you have a recollection of Mr. Williams
17 attending at this period of time?

18 A Yes, I do. I would have -- I know he was in
19 Saskatoon on a couple of occasions, and they were
09:42 20 both in the earlier part of -- well I shouldn't
21 say the earlier part of 1990, but that would have
22 been about the right time.

23 Q And do you recall providing any assistance in
24 arranging for Mr. Williams to interview some
09:42 25 police investigators?



1 A I recall I had a phone conversation with Mr.
2 Williams back in that portion of the -- of 1990
3 where he was requesting that I contact or try to
4 locate a number of witnesses, among them being
09:42 5 Mr. Charlie Short, who was a retired member,
6 Inspector Ray Mackie, and I believe Jack Parker
7 may have been on -- one of those people on the
8 list. They were basically all the retired members
9 that were -- had left the service. I had located
09:43 10 some of them, some of the addresses, or some of
11 the people had been contacted, there were some I
12 wasn't able to locate.

13 Q And you were just facilitating Mr. Williams'
14 interviews?

09:43 15 A Right.

16 Q All right. If I could next turn your attention to
17 document 105317. This appears to be a report done
18 by Constable Farion June 11th, 1990 to chief of
19 police addressed to your attention. It appears
09:43 20 that Constable Farion was asked to provide some
21 details about police interaction with witnesses
22 Ron Wilson and Nichol John; do you recall if this
23 is something you instructed Constable Farion to
24 do?

09:43 25 A I don't recall. I don't recall it specifically,



1 although it's -- it's -- his memo is drawn at my
2 attention. I would believe that the initial
3 request would have come perhaps over my desk, or
4 through my desk, but would have likely come from
09:44 5 the chief's office as is stated in there.

6 Q So it's possible that this was just sent to you
7 simply for information purposes?

8 A It's possible, yes.

9 Q If I could turn you to page 2 of that document,
09:44 10 under the heading Ronald Wilson there are
11 references which appear to be from the Gail Miller
12 murder file, can we take it from this letter that
13 by June 11th of 1990 the indexing or
14 re-organization of the police file on the Gail
09:44 15 Miller murder would have been completed?

16 A I would suggest it would have been completed. I
17 would make that assumption from the fact that the
18 numbers by each entry is, I think, consistent with
19 the way the file was indexed, with the number --
09:45 20 or the letter being the binder and the number
21 after being the page on which the information was
22 found.

23 Q All right. Do you have a recollection of
24 providing any further assistance to Mr. Pearson or
09:45 25 Mr. Williams beyond June of 1990? And I'm, right



1 now, I'm just asking -- specifically speaking
2 about the year 1990, we'll turn to 1991 in a
3 moment.

09:46 4 A Nothing specific. I could add that there was
5 constant conversations or contact between myself
6 and Mr. Pearson and it was related to a number of,
7 of issues, not totally related to the Miller, Gail
8 Miller investigation, so I don't recall anything
9 specific related to this issue, but --

09:46 10 Q Is Mr. Pearson someone that you would have regular
11 contact with in your position with the Saskatoon
12 Police Department at that time?

13 A Yes. Almost -- I would say almost on a, not a
14 daily basis, but every other day, a couple of
09:46 15 times a week at least.

16 Q On a variety of files?

17 A On a variety of files, yes.

18 Q If we could turn to document 010019. You wouldn't
19 have seen this document before, it's a memorandum
09:46 20 that appears to be prepared by Eugene Williams,
21 it's dated July 5th of 1990, it's a memorandum to
22 file, and I'm just going to read a portion of this
23 to you starting at the first paragraph:

24 "On July 4, 1990, I learned from Bruce

09:47 25 MacFarlane that Hersh Wolch had the



1 names of four Saskatoon rape victims,
2 allegedly assaulted by Larry Fisher.
3 This information did not accord with the
4 information we had earlier received from
09:47 5 the R.C.M.P. and the Saskatoon City
6 Police, who advised us that there were
7 not any incidents of rape attributed to
8 Larry Fisher, which occurred in
9 Saskatoon."

09:47 10 The memorandum goes on to list the four Saskatoon
11 victims of Larry Fisher.

12 Do you recall if any request
13 was made of you to look for any incidents of rape
14 attributed to Larry Fisher during this period of
09:47 15 time?

16 A I don't recall if we were specifically asked for
17 that information. I think the initial reference
18 we've already covered in that one document was to
19 review to see if we, what information I think we
09:48 20 had on file on Larry Fisher, but I don't recall
21 being asked specifically for that.

22 Q All right. It's possible that Mr. Williams asked
23 somebody else within the police department to make
24 those inquiries?

09:48 25 A It's possible. I just don't maybe recall it, but



1 it's possible he could have, yes.

2 Q If we could turn to page 2, the memorandum
3 continues:

4 "After speaking with Mr. Wolch, I asked
09:48 5 Sergeant Pearson to search the Saskatoon
6 City Police files to determine whether
7 Larry Earl Fisher was convicted, as
8 alleged of the rapes and indecent
9 assaults of the victims noted above. If
09:49 10 there was a link, I requested that he
11 send occurrence reports and witness
12 statements, where available, which
13 relate to the offences. He agreed to do
14 so.

09:49 15 In a later conversation that
16 day, Sgt. Pearson noted that the
17 convictions registered in Regina
18 apparently occurred in Saskatoon. He
19 will redouble his efforts to locate the
09:49 20 files and provide the materials I
21 requested."

22 So it appears from this document at least,
23 Mr. Quinn, that in July, 1990, the names of Larry
24 Fisher's four Saskatoon victims were learned. Do
09:50 25 you recall in March of 1990 whether any of the



1 names of Larry Fisher's rape victims were known
2 or discussed or mentioned to you at least?

3 A I don't believe that we -- my recollection is that
4 we didn't have that information. I think when the
09:50 5 initial inquiry had been done on the questions
6 related to Fisher, there was no information on Mr.
7 Fisher in our Central Records and there was
8 nothing, so that information not being there, I
9 would be unable to cross-reference it with
09:50 10 anything else that was possibly in our files.

11 Q So at some point you did conduct a search to see
12 if Larry Fisher was in your records?

13 A I believe that was done when -- it could have been
14 done when Farion was doing his initial inquiry
09:51 15 back in March of that year related to the
16 questions that Mr. Williams asked about Fisher.

17 Q All right. I'll just draw your attention to a few
18 more documents and then question -- I'll have a
19 few questions for you. I'm looking at 056743,
09:51 20 page 42. This is Mr. Pearson's typed notes again,
21 July 4th, 1990:

22 "Mr. Williams called wanting
23 to confirm if Saskatoon City Police had
24 any information on convictions of Fisher
09:51 25 in Saskatoon in 1968 to 1970. It was



1 originally believed these were Regina
2 offences but is now believed Fisher went
3 to court in Regina and the offences
4 actually took place in Saskatoon.

09:51 5 I called Saskatoon Provincial
6 Court, Bob Taylor, and also Regina
7 Provincial Court, Shirley Newels. It
8 was determined that QB Court held
9 records in Regina. I called Maggie
09:52 10 Pelletier, Regina QB, who confirmed she
11 had conviction records of Fisher on the
12 following dates."

13 And the four Saskatoon victims, (V1)--- (V1)-,
14 (V2)----- (V2)-----, (V3)-- (V3) (V3)----- and
09:52 15 (V5)-- (V5)---.

16 If I could then turn you to
17 page 45 of that same document, and I believe it
18 has been established that this date should be
19 July 13th of 1990, I'm looking at paragraph 200:

09:52 20 "Mr. Williams and myself attended the
21 Saskatoon City Police and met with
22 S/Sgt. Ron Bertrand and obtained a copy
23 of the 1968 offence file involving
24 Fisher. We were trying to determine if
09:52 25 his M.O. (weapon) is consistent with any



1 other crimes. No weapon was used in the
2 very limited material that we received.
3 Also met with Insp. Simpson for a few
4 minutes and updated him in a very
09:53 5 general way as to what was happening.
6 Mr. Williams and I also attempted to get
7 a locate on Melnyk and Lapchuk.
8 Unsuccessful at this time."

9 So it appears that Mr. Pearson and Mr. Williams
09:53 10 have come back to the police at this time to
11 request that an additional search be conducted.
12 Were you part of that at all?

13 A I don't know if I was part of it. I recall when
14 the names were supplied to us that it was likely
09:53 15 information that we hadn't had prior to work off
16 of and I recall that there was a file located
17 during that time, but I can't recall which
18 particular file it was that was found in our
19 records.

09:53 20 Q All right. And who was Staff Sergeant Ron
21 Bertrand?

22 A He was a staff sergeant, or a member that was
23 assigned in charge of the plain-clothes detective
24 division at the time.

09:54 25 Q And is there any reason why Mr. Pearson would have



1 met with him?

2 A It's quite possible that maybe I wasn't available
3 or he had contacted me and I had asked Bertram to
4 look after it. Maybe Farion wasn't available.

09:54 5 Q All right. I would like to turn your attention
6 now to 1991. We know that on February 27th of
7 1991 David Milgaard's first Section 690
8 application to the Federal Minister of Justice was
9 denied and that by letter dated August 14th, 1991
09:54 10 a second application to the Minister of Justice
11 was made. We'll get into some documents and some
12 details a little bit later, but are you able from
13 memory to give us an idea of how you were involved
14 with the Milgaard matter in 1991?

09:55 15 A I was still assigned to the inspector position at
16 CID and so my, I guess, position as being a
17 contact person hadn't changed any and when the
18 issues of, I believe, the files being missed at
19 that time came forward, I guess I was designated
09:55 20 at that time to basically undertake an
21 investigation or an inquiry into where these files
22 were or whether we still had them in our
23 possession or what happened to them, and that
24 would have come down from likely Deputy Chief
09:56 25 Montague, or my immediate, the superintendent who



1 was my immediate boss.

2 Q All right. If we could look at 000184, again, you
3 may not have seen this document, it just provides
4 some context, so I'll read from a portion of it.
09:56 5 This is the letter dated August 14th, 1991, it's
6 written by Hersh Wolch, David Milgaard's counsel,
7 and it's addressed to Kim Campbell. Starting at
8 the third paragraph:

9 "When we first made our application the
09:56 10 suggestion that Larry Fisher was the
11 perpetrator was not the main thrust and
12 we were at that time advised by your
13 Department that there were no police
14 reports available on past offences of
09:57 15 Mr. Fisher. Whereas we suggested there
16 was a distinct pattern and although the
17 similarities were never placed before
18 you, we accepted that we were at that
19 time at a dead end.

09:57 20 Once your decision was brought
21 to our attention we were determined to
22 proceed further in ascertaining Larry
23 Fisher's possible guilt and we were
24 somewhat surprised to learn that there
09:57 25 was ample material available, including



1 at least one police report concerning
2 previous victims of Fisher."

3 So it would appear from this letter that there is
4 now some question being raised of whether there
09:57 5 are reports available on Larry Fisher's offences?

6 A Right, yes.

7 Q And that I assume is what prompted your
8 involvement again in August of 1991?

9 A I believe that was part of it. There was -- there
09:57 10 was a lot of material or articles in the newspaper
11 at that particular time and obviously it brought
12 concern to the department because of the issues it
13 raised and so that prompted, I think, part of the
14 need to do a better, or a more thorough search or
09:58 15 another investigation into where these files were.

16 Q All right. If I could turn you to document
17 333576. This is a memorandum to file prepared by
18 Eugene Williams, it's dated August 20th, 1991, it
19 reads:

09:58 20 "Today I spoke with Sgt. Pearson and
21 asked him to find out if there are
22 statistics that identify the number of
23 sexual assaults committed by a
24 knife-wielding assailant in Saskatoon in
09:58 25 1968, 1969, and 1970."



1 If I could then turn to 056743.

2 COMMISSIONER MacCALLUM: What was that one
3 there, please, Ms. Monar Enweani, August 20th,
4 '91, that doc. ID?

09:59 5 MS. MONAR ENWEANI: 333576.

6 COMMISSIONER MacCALLUM: 576. And now you
7 want --

8 MS. MONAR ENWEANI: We are back to Sergeant
9 Pearson's typed notes, 056743, page 55.

09:59 10 COMMISSIONER MacCALLUM: All right.

11 BY MS. MONAR ENWEANI:

12 Q Paragraph 242, Pearson writes:

13 "Called Insp. Quinn, City Police, asking
14 if he could give the cases where weapons
09:59 15 were used in sex offences or if he could
16 give details of sex offences for the
17 years 1968, 1969 and 1970. Quinn will
18 initiate a search of their record system
19 and let me know what he can come up
09:59 20 with."

21 And the date of this entry is August 22nd of
22 1991. Pearson also writes:

23 "I also provided him --"

24 That being you --

10:00 25 "-- with the names of victims (V5)---,



1 (V2)-----, (V1)-, and (V3)-----, with
2 supporting data, asking him to again
3 search for any possible file material on
4 these investigations."

10:00 5 Can you recall briefly what you did to follow
6 through on these requests?

7 A Okay, on the request that was identified on the
8 22nd of August, I had contacted the crime analyst
9 who at that time now was Constable Lorne Gelowitz
10:00 10 and asked him if he could provide those statistics
11 for me and that was his task; however, it turned
12 out that it required him to go through all the
13 microfiche tapes that were on file because they
14 were unable to do a search on the computer system
10:01 15 at the time to get those statistics, so he
16 manually had to go through all these files,
17 microfiche files to get the occurrence numbers.

18 Q He couldn't search at that time by offence type;
19 is that what you are saying?

10:01 20 A Right, so he was tasked with that, and I believe
21 he had a number of other people helping him in
22 that because it was quite an undertaking, and I
23 believe there was also a request put in with,
24 through Gelowitz to also check for these names
10:01 25 that were supplied in paragraph 2 of that request.



1 There was other civilian members involved in that
2 search is my recollection, including, I believe, a
3 couple of the girls that worked, or ladies that
4 worked in the Central Records department.

10:02 5 **Q** Okay. It appears to me that these were two
6 separate tasks. Is that --

7 **A** They were, I think they came in at the same time,
8 so it would be -- it could have been, they could
9 have been ongoing at that particular time. It was
10:02 10 kind of, I think it's kind of, it could be -- my
11 memory, it would have been something that was kind
12 of an ongoing from a previous search that we maybe
13 had done because obviously there had been a file
14 located from previous notes and turned over to
10:02 15 Sergeant Pearson, so the search would have been
16 done I think prior onto those names because we
17 already had them.

18 **Q** In July of 1990?

19 **A** Right. I think we were being asked to go back and
10:03 20 check them again.

21 **Q** Okay. Are you aware whether an extensive search
22 was conducted in July of 1990?

23 **A** I would think it had been fairly thorough, but I
24 guess knowing now, or as time progressed, what
10:03 25 information we did not have available on our



1 system would have kind of hampered our ability to,
2 just by going to our computer system, because
3 knowing now some of those names were not on the
4 computer system.

10:03 5 Q All right. And we'll come to this in a minute,
6 but it appears in 1991 you are starting to look at
7 microfilm. Do you know if that was done in 1990
8 or was requested to be done?

9 A I don't recall that.

10:03 10 Q All right. If we could turn to 012700, this is a
11 report of August 28th, 1991, it's prepared by
12 Constable Gelowitz, and it's addressed to the
13 chief of police to your attention. Perhaps I'll
14 read this document, it's brief:

10:04 15 "Analysis of sex crimes for
16 1968-1970. After having obtained the
17 complete list of occurrences relating to
18 rape and/or sexual assaults, I have
19 examined each file with regards to the
10:04 20 parameters that you provided to me and
21 would respectfully like to report the
22 following:"

23 And then by year he reports the total number of
24 reported cases of rape and also of sexual
10:04 25 assault. He continues:



1 "Of all the incidents that
2 were examined regarding m.o. and if a
3 weapon was used, it was ascertained that
4 in all occurrences 4 were identified in
10:05 5 which a weapon (knife) was observed by
6 the victim."

7 And then he identifies those four occurrences
8 involving a weapon. If we turn to page 2, the
9 letter reads:

10:05 10 "It should be also noted that
11 3 files were found to be missing from
12 the microfiche."

13 He lists those three files and it appears that
14 number 10910-68 refers to the (V2)----- file.
10:05 15 Continuing on with the letter:

16 "Enclosed is a brief summary
17 of each report that was received by our
18 department.

19 After analyzing all of the
10:05 20 above-mentioned occurrences, there was
21 no suspect mentioned as being
22 responsible for more than one offence,
23 nor was there any clear trend or method
24 of attack evident in the files
10:05 25 examined."



1 You would have instructed Constable Gelowitz on
2 how to carry out this search or would he have
3 determined that on his own?

4 A I think he determined that on his own what was
10:06 5 required. I gave him the information that we
6 required for the response and the only place that
7 that information would have been available would
8 have been from the Central Records system itself
9 or the microfiche which was on, in a storage area
10:06 10 in the police service building.

11 Q I'm just wondering if you can help me understand
12 the first paragraph of this letter, I'm back on
13 page 1. Constable Gelowitz writes:

14 "After having obtained the complete list
10:06 15 of occurrences relating to rape and/or
16 sexual assaults..."

17 Does that mean that he would have gone through
18 all of the microfilm for '68, '69, '70 to
19 identify occurrences of rape and sexual assault?

10:06 20 A That was my understanding at the time.

21 Q All right. And then he says:

22 "I have examined each file with regards
23 to the parameters that you provided to
24 me..."

10:07 25 A Right, which were identified as the indication of



1 files that had a weapon involved in them, whether
2 they be a sexual assault or at that particular
3 time a rape file.

4 Q All right. If we could turn to 057451. Mr.
10:07 5 Quinn, this is a newspaper article entitled
6 "Police can't find rape files", that appeared in
7 *The Globe and Mail* on August 29th of 1991. I
8 won't read the whole article, but I will read a
9 few portions of it. The first paragraph:

10:08 10 "Files that may have a
11 crucial bearing on whether David
12 Milgaard is guilty of murder have
13 disappeared from the Saskatoon Police
14 Department's computerized records system
10:08 15 and an internal investigation is
16 underway, *The Globe and Mail* has
17 learned.

18 "Something went on, it's very
19 bizarre, it's something that just
10:08 20 shouldn't happen, for every detail like
21 that to vanish," a Saskatchewan police
22 source said. "Somebody's tampered with
23 the system."

24 For several days, Saskatoon
10:08 25 police have been investigating the



1 apparent disappearance of at least four
2 files that involve convicted
3 Saskatchewan serial rapist Larry Fisher,
4 who has been increasingly linked to the
10:08 5 Milgaard case."

6 If we go to the bottom of the page:

7 "The missing files involve
8 the four sexual assaults that occurred
9 in Saskatoon, and to which Mr. Fisher,
10:08 10 now 43, subsequently confessed."

11 Turn to page 2:

12 "There is no indication of
13 how long the Saskatoon force's records
14 on Mr. Fisher's rape victims have been
10:09 15 incomplete. Normal department practice
16 is for the basic information on a case
17 to be retained indefinitely on computer,
18 with the details preserved on
19 microfiche.

10:09 20 Four Saskatoon police
21 inspectors are now involved in trying to
22 track down the missing files, the police
23 source said. A number of officers have
24 already been questioned, as have
10:09 25 civilians involved in the maintenance of



1 the computer system.

2 The suspicion voiced by Mr.
3 Milgaard's supporters is that after Mr.
4 Fisher did surface -- he was caught
10:09 5 while carrying out one of two rapes in
6 Winnipeg -- the Saskatoon investigators
7 realized that the pattern of his crimes
8 was unusually similar to the Miller
9 slaying, and that efforts were made to
10:09 10 keep the publicity to a minimum.

11 In Mr. Fisher's four Saskatoon
12 attacks, the Globe reported last week,
13 not only were his victims never notified
14 of his arrest and conviction, but his
10:10 15 name never appeared in the rape-victims'
16 files at all. There is thus no
17 indication of what he may have said to
18 investigators when they questioned him."

19 Do you recall being made aware of this article at
10:10 20 the time it came out?

21 A I don't particularly recall this particular
22 newspaper article or the one previous. I know
23 there was a number of articles that were appearing
24 in the daily newspapers in Canada.

10:10 25 Q At some point did you become aware that there was,



1 I guess, a Saskatchewan police source who was
2 alleging that Saskatoon police files had been
3 tampered with?

4 A We felt there was somebody that was giving, or
10:10 5 passing that information on.

6 Q To the press?

7 A To the press or to possibly Mr. Milgaard's people.

8 Q All right. If I could turn you to 327551, this is
9 a news release from the Government of
10:11 10 Saskatchewan, it's dated August 29th, 1991:
11 "Saskatchewan Justice Milgaard and Fisher files
12 intact and secure." It reads:

13 "In light of controversy
14 regarding police files in the David
10:11 15 Milgaard and Larry Fisher cases, Justice
16 Minister Gary Lane today confirmed that
17 the Public Prosecutions Division of
18 Saskatchewan Justice is in possession of
19 its original files concerning these
10:11 20 cases.

21 To the knowledge of department
22 officials they are in the same form and
23 as complete as they were when the
24 prosecutions were carried out."

10:11 25 Do you recall having any contact with officials



1 from Saskatchewan Justice about this -- about
2 this news release?

3 A I don't recall that, no. I recall when it was,
4 when they had advised us that they had located the
10:12 5 files, but I don't recall the particular news
6 release.

7 Q All right. So you were aware that they were
8 checking to see if they did have files?

9 A Yes.

10:12 10 Q And if we could turn to 012120, this is a
11 Saskatoon Police Force fax cover sheet, I believe
12 it's dated August 30th, 1991, and is this your
13 handwriting, Mr. Quinn?

14 A Yes, it is.

10:12 15 Q Do you recall anything about this document?

16 A I recall having some conversation with Ellen Gunn
17 from the provincial Justice Department concerning
18 the files that were I guess linked to Mr. Fisher
19 and I recall -- from this document I recall
10:13 20 sending the particular file to Ellen Gunn and I'm
21 not too sure why that was done, but I would feel
22 it was a part, a follow-up to see what we had in
23 our files to maybe correspond to what they had,
24 I'm not sure, but I recall that there was a
10:13 25 conversation and she requested what we had be sent



1 to her.

2 Q Okay. So it could be that what you sent to her at
3 this time is what the Saskatoon police had managed
4 to find in terms of files on Larry Fisher or his
10:13 5 rape victims?

6 A Right, and I guess going back to another question
7 that you had asked me a while back related to the
8 microfiche, when it had been searched, when Staff
9 Sergeant Bertrand had turned that file over to
10:14 10 Rick Pearson in 1990, he would have had to have
11 obtained that file off the microfiche because that
12 was the only place it would have been available,
13 so we had gone through -- there had been some
14 search done of the microfiche.

10:14 15 Q And you are able to say that because -- we'll get
16 to that, but you continued on with your search in
17 1991 and you came to that particular conclusion?

18 A Right. I think I just want to clarify, you asked
19 me if we had searched it back in 1990.

10:14 20 Q Yes.

21 A And my recollection is we would have gone through
22 the microfiche. Bertrand would have found that
23 file and the only place for it was on the
24 microfiche.

10:14 25 Q All right. I would like to turn you to document



1 333594. This is a memorandum dated September 4th,
2 1991 prepared by Eugene Williams to Bruce
3 MacFarlane, the subject is "David Milgaard
4 Departmental Contacts with the Saskatoon Police -
10:15 5 Press Allegations of a Police Cover-up."

6 "This memo is to inform you
7 of the Departmental contacts with the
8 Saskatoon Police. On March 1, 1990 I
9 spoke to Deputy Chief Montague to
10:15 10 request assistance in tracing the
11 activities of Larry Fisher. My verbal
12 request was confirmed in writing that
13 day.

14 On March 22, 1990 Deputy Chief
10:15 15 Montague responded in writing to my
16 written requests of March 1, 1990. In
17 the interim I had also examined their
18 files during a trip to Saskatoon. At
19 the time I learned that the 1968 sexual
10:15 20 assault files were not available. A
21 number of older files had been
22 destroyed, as part of their normal file
23 destruction procedure. The 1968
24 assaults to which Fisher had pleaded
10:16 25 guilty had not been microfilmed before



1 they were destroyed.

2 Going to the bottom of the memorandum:

3 "Despite press reports alleging that
4 Saskatoon police files were lost,
10:16 5 recently, the police told me in 1990
6 that the files were not available. I
7 relayed that information to Hersh Wolch
8 shortly after I had received it. The
9 Centurion Ministries report which
10:16 10 predates Milgaard's second application
11 also notes that the 1968 files
12 concerning Fisher's attacks in Saskatoon
13 were not available. In my dealings with
14 Saskatoon City Police, I have found no
10:16 15 evidence of a cover-up. I saw all
16 relevant, available files that I
17 requested. My correspondence with the
18 Saskatoon police department is
19 available, if necessary."

10:17 20 Are you able to comment at all on what Eugene
21 Williams states in his memorandum?

22 A I guess my comment there would be that, going back
23 to when I made reference to the file that Bertrand
24 had turned over to him, that if the search had
10:17 25 been conducted on the names that had been supplied



1 it was possible, back then, that those files
2 wouldn't have been located.

3 Q Sorry, would have been?

4 A Would not have been.

10:17 5 Q Would not have been?

6 A Right. So what he is saying in that letter is
7 correct, that they were not available or they were
8 not there in 1990, and he was likely aware of
9 that, that he had passed that information on to
10:17 10 Mr. Williams.

11 Q All right. Umm, he makes the statement that:

12 "The 1968 assaults to which Fisher had
13 pleaded guilty had not been microfilmed
14 before they were destroyed."

10:18 15 Had the police by this time, by September 4th of
16 1991, already concluded that files missing had
17 been destroyed before being microfilmed?

18 A I think it was safe to state that all those files,
19 irrespective of these particular files, all those
10:18 20 files back in that period of time had been
21 destroyed. That was a process that was done once
22 they were microfilmed.

23 Q So the paper copy would have been destroyed?

24 A The paper copies would have been gone.

10:18 25 Q But they would have existed on microfilm?



1 A They should have been on the microfiche.

2 Q All right. I'm going to jump ahead here just a
3 little bit to refer you to the report that was
4 prepared by Chairman Laing of the Saskatchewan
10:19 5 Police Commission into the allegation of missing
6 files. I know I'm jumping ahead of myself here a
7 little bit, but in this report there is a summary
8 of what you and Constable Gelowitz were able to
9 find in 1991, when you conducted a thorough
10:19 10 examination of the microfilm?

11 A Yeah.

12 Q And it might assist us and provide some context.
13 So this document, I'm looking at 000263. And,
14 again, this is the report of Chairman Laing from
10:20 15 the Saskatoon Police Commission to the Saskatoon
16 Board of Police Commissioners and it's dated
17 November 29th of 1991, and I'd like to turn to
18 page 13. Sorry, I'm looking at, I need page
19 000275.

10:20 20 "Records and File Investigation

21 By the time the Saskatchewan
22 Police Commission was requested to
23 undertake this investigation, then
24 Acting Chief of the Saskatoon City
10:21 25 Police department, Deputy Chief



1 Montague, had assigned personnel to
2 attempt to locate the Larry Fisher
3 files. An inspector, a constable, two
4 special constables, two civilian
10:21 5 members, and a civilian manager in
6 charge of Saskatoon Police records
7 devoted time to this search. A search
8 of the computer records by the civilian
9 manager in charge of Saskatoon Police
10:21 10 records failed to reveal the names of
11 Larry Earl Fisher, or the name of the
12 complainant in Occ. No. 10173/68 ...",
13 which was (V1)-:
14 "... or the name of the complainant in
10:21 15 Occ. No. 11435/68.",
16 which was (V3)-----.
17 "The search did disclose the names of
18 the complainants in Occ. No. 10910/68
19 and 1183/70.",
10:22 20 which is (V2)----- and (V5)--- respectively.
21 "With respect to Occ. No. 10910/68, the
22 information on computer disclosed the
23 occurrence number, the name of the
24 victim, and the complaint of rape. It
10:22 25 will be noted there was no



1 cross-reference to Larry Fisher which in
2 the normal course should have been there
3 if the file had been concluded with a
4 conviction. The reference to Occ. No.
10:22 5 1183/70 indicated the occurrence number
6 1183/70, the name of the victim, and the
7 complaint of rape. Again there was no
8 cross-reference to Larry Fisher.

9 A search of microfilm was
10:22 10 undertaken and 151 microfilm tapes were
11 reviewed which contained the records of
12 61,600 files. The following information
13 was retrieved from the microfilm files.

14 1., and this relates to (V1)-:

10:22 15 "Occurrence No. 10173/68.

16 The microfilm contained a copy of the
17 victim's statement of the circumstances
18 of the offence, two follow-up
19 investigation reports, and a Saskatoon
10:22 20 Police exhibit and seized article
21 record. This material did not
22 constitute a complete file on the
23 investigation conducted in this matter."

24 2., this relates to (V5)---:

10:23 25 "The complete investigation



1 file on occurrence number 1183/70. The
2 concluding report is dated February 5,
3 1971 at which time the investigation
4 remained unsolved. It will be noted
10:23 5 that this file material did not include
6 any reference to Larry Fisher pleading
7 guilty to the offence."

8 "In a numerical sequence where the
9 material for Occ. No. 10910/68 should
10:23 10 have been located on microfilm, a card
11 was filmed which stated 'See
12 Supplementary List for this occurrence'.
13 The subsequent search was not able to
14 locate this file material although all
10:23 15 microfilm cassettes identified as
16 'Supplementary List' were reviewed.

17 4. No record of Occ. No. 11435/68 ...",
18 which was (V3)-----:

19 "... was located on microfilm."

10:24 20 COMMISSIONER MacCALLUM: Ms. Monar, I'm
21 wondering, would you be kind enough to list those
22 occurrence numbers for me with the names of the
23 complainants?

24 MS. MONAR ENWEANI: Sure.

10:24 25 COMMISSIONER MacCALLUM: Otherwise, I'll



1 have a hard time finding them.

2 MS. MONAR ENWEANI: Sure. Occurrence
3 number 10173 of 68 relates to (V1)--- (V1)- --

4 COMMISSIONER MacCALLUM: All right.

10:24 5 MS. MONAR ENWEANI: -- and the date of the
6 offence was October 21st of '68; 10910 of '68 is
7 (V2)-----, and the date of that offence was
8 November 13th of '68; 11435 of '68 is (V3)-----,
9 the date of that offence was November 29th of
10:25 10 '68; and, lastly, 1183 of '70 is (V5)--
11 (V5)--- --

12 COMMISSIONER MacCALLUM: 1183?

13 MS. MONAR ENWEANI: Of '70, yeah.

14 COMMISSIONER MacCALLUM: Uh-huh?

10:25 15 MS. MONAR ENWEANI: -- is (V5)---, and that
16 rape occurred on February 21st of 1970.

17 COMMISSIONER MacCALLUM: Thank you.

18 MS. MONAR ENWEANI: This might be an
19 appropriate point to break.

10:25 20 COMMISSIONER MacCALLUM: Sure.

21 *(Adjourned at 10:25 a.m.)*

22 *(Reconvened at 10:45 a.m.)*

23 BY MS. MONAR ENWEANI:

24 Q If I could take you back, Mr. Quinn, for a moment
10:45 25 to the Laing report that we were just speaking of,



1 it's 000263, and I'm looking at page 13. Umm, I
2 just want to try and get an idea of what exactly
3 was found in 1991 because it will provide the
4 context for all of our other discussions.

10:46 5 "A search of the computer records by the
6 civilian manager in charge of Saskatoon
7 Police records failed to reveal the
8 names of Larry Earl Fisher, or the name
9 of the complainant in ... 10173/68 or
10:46 10 the name of the complainant in ...
11 101435 ..."

12 Now we will go back and get some detail on how
13 the Saskatoon Police Service maintained their
14 records and how their record-keeping changed over
10:46 15 the years, but at least we know from here that in
16 1991 there would have been a search of the
17 computer index done; is that correct?

18 A That's correct.

19 Q You would have plugged in the names of Larry
10:46 20 Fisher, the names of (V1)-, (V2)-----, (V3)-----,
21 and (V5)---, the four victims that had been
22 identified to you?

23 A Yes.

24 Q Okay. And it appears, from this report, that what
10:47 25 was found by doing a search of the computer index



1 was that there was no record of a Larry Fisher?

2 A That's correct.

3 Q Okay. And that would mean that there was never
4 any card index created with Larry Fisher's name on
10:47 5 it?

6 A Yes.

7 Q All right. Then we also know that, by doing a
8 computer search, there was no record of the
9 complaint in occurrence number 10173 of '68, and
10:47 10 that is the (V1)- file, so if somebody had entered
11 the (V1)- name into the computer they wouldn't
12 have got a hit; is that what this report is
13 telling us?

14 A Yes, if you had entered the name, it wouldn't have
10:48 15 come up.

16 Q All right. And similarly with occurrence number
17 also 11435 of '68, (V3)-----, if you ran that
18 name by a computer search nothing would come up?

19 A Nothing would have been shown.

10:48 20 Q All right. So what we do know from this report is
21 that if you did a search of the computer you
22 wouldn't get any information on Larry Fisher, on
23 (V1)- or (V3)-----, but this report indicates:

24 "... the search did disclose the names
10:48 25 of the complainants in Occ. No. 10910/68



1 and 1183/70."

2 And those occurrence numbers refer to the
3 (V2)----- and (V5)--- matter respectively?

4 A Yes.

10:48 5 Q So it would appear, for some reason, that there
6 would have been a card index with (V5)---' name or
7 the occurrence number created, and that's how you
8 were able to get a hit when you searched --

9 A That's --

10:48 10 Q -- on the computer?

11 A That's correct.

12 Q And similarly for (V2)----- as well?

13 A Yes.

14 Q All right. Now we know -- and I'm looking at page
10:49 15 14 of the Laing report -- that there was actually
16 some file material found regarding the (V1)-
17 occurrence. I'm looking at paragraph number 1.
18 So even though, when you searched the computer,
19 there was no record of (V1)-, I'm assuming that
10:49 20 somehow, when you did the extensive microfilm
21 search, you found a partial record of the (V1)-
22 complaint?

23 A That's correct.

24 Q All right. If we go to paragraph 2, which relates
10:49 25 to (V5)---, first of all she would have -- that



1 would have shown up on the computer search?

2 A Yes.

3 Q So then you would be able to easily obtain that
4 file from microfilm; is that correct?

10:50 5 A Yes.

6 Q Paragraph 3 refers to (V2)-----, and again, this
7 is one occurrence that, if you searched the
8 computer, her name or the occurrence number would
9 come up?

10:50 10 A Yes, that's correct.

11 Q Okay. And this is a little different, I
12 understand, because when you searched on the
13 computer what you found was a notation saying:

14 "See Supplementary List for this
10:50 15 occurrence"?

16 A That's correct.

17 Q Okay. So it might not be as easy to find that
18 file on microfilm?

19 A Umm, it should have been.

10:50 20 Q Okay. By going to the supplementary --

21 A By going to the supplementary --

22 Q -- microfiche?

23 A Right.

24 Q Okay. And then, lastly, paragraph 4 indicates
10:51 25 that there was no record at all of (V3)-----



1 located on microfilm, and the previous paragraph
2 tells us, as well, that there was no hit when you
3 searched the computer for (V3)-----?

4 A That's correct.

10:51 5 Q All right. We'll later come back to this report,
6 but if I could just turn you back to some earlier
7 documents, and we'll start proceeding in a
8 chronological fashion here again.

9 If I could turn you back to the
10:51 10 September 4th, 1991 memorandum prepared by Eugene
11 Williams, it is 333594. Here, Mr. Williams
12 states:

13 "The 1968 assaults to which Fisher had
14 pleaded guilty had not been microfilmed
10:52 15 before they were destroyed."

16 Now can we assume that this statement must be
17 incorrect, for whatever reason, simply because
18 you later discovered the (V1)-, or a portion of
19 the (V1)- file on microfilm, which means that it
10:52 20 obviously wasn't destroyed before it was
21 microfilmed?

22 A I guess it's not accurate with what we, I guess
23 with what I know now, but I'm not sure on the
24 context that he -- when he wrote that letter --

10:52 25 Q Right?



1 A -- whether, the way it's worded, whether he did --

2 Q Yes.

3 A He means what he says.

4 Q Right. All right. So you are not aware of what

10:52 5 particular information was provided to Mr.

6 Williams that would lead him to make this

7 conclusion?

8 A No, I'm not, no. I don't -- I wasn't, I don't

9 think I was present when that information was

10:53 10 given to Mr. Williams, so I'm not sure how it was

11 interpreted by him.

12 Q Could I turn you next to document 333596, and I'm

13 looking at page 2. This is a September 6th, 1991

14 news release by the Saskatoon Police Department

10:53 15 and it reads:

16 "During 1990, a

17 representative of the Federal Justice

18 Department requested access to several

19 Saskatoon City Police files. The files

10:53 20 concerned were very old and only one

21 from 1970 was located at the time. This

22 file remains in the possession of the

23 Saskatoon City Police.

24 We recently renewed our search

10:53 25 for the remaining files and have since



1 located further material which is being
2 provided to the Federal Department of
3 Justice. A search is continuing for the
4 remainder of the files.

10:54 5 Files of the nature requested
6 are required to be maintained for only
7 10 years, but having been reduced to
8 microfilm, many are available beyond
9 that time limit.

10:54 10 We have no reason to suspect
11 that any files have been destroyed or
12 otherwise tampered with and there is no
13 internal investigation of any wrongdoing
14 underway.

10:54 15 Because there has been a new
16 application for a review, the Federal
17 Department of Justice has requested that
18 we not publicly discuss details of the
19 files."

10:54 20 My question is whether you had any part in
21 preparing this news release?

22 A No, I did not.

23 Q All right. And the news release indicates that in
24 1990 a 1970 file was provided to the federal
10:54 25 Department of Justice, and assuming this



1 information to be accurate, this must then
2 indicate the (V5)--- file, which is the 1970 rape,
3 it's occurrence number 1183 of '70?

4 A That would be the file, I would believe, yes.

10:55 5 Q If we could have document 105189. Can you tell me
6 what this document appears to be?

7 A That is an inter-department memo form that was
8 used by the police service during that period of
9 time, in 1991, and it's a memo from -- between the
10:55 10 two of the ladies that worked in our central
11 records department. I recognize the names, their
12 last names are not on there, but I -- I know who
13 they are. I don't know if you want me to identify
14 them or not?

10:56 15 Q Sure, you can identify them?

16 A The memo is from a lady by the name of Elaine
17 Kanoby, and I believe the spelling was
18 K-A-N-O-B-Y, and it was to another supervisor --
19 they were both supervisors in central records at
10:56 20 that time -- Marie Unger, and its subject is
21 missing -- missing files. And, basically, the
22 memo is from Elaine identifying to Marie what she
23 had done during her shift, or what she had done
24 reviewing or looking for the files.

10:56 25 Q All right. So are we able to take from this



1 document that, at least as of September 6th of
2 1991, this would show that a microfiche search is
3 under way by the Saskatoon City Police --

4 A Right.

10:56 5 Q -- to find information about these files?

6 A That's correct.

7 Q And I take it that you were, in part, overseeing
8 that search?

9 A Yes. It was kind of two or three things going on
10:57 10 at the same time there in relationship to these,
11 the microfilm or the microfiche at the time.

12 Q All right. If we could have 333600. This is
13 another file memorandum from Mr. Williams, it's
14 dated September 6th of 1991, and it relates to a
10:57 15 telephone conversation he has with Mayor Henry
16 Dayday:

17 "On September 6, 1991 His
18 Worship Mayor Dayday of the City of
19 Saskatoon, who is also Chairman of the
10:57 20 Board of Police Commissioners, called to
21 ask whether I had any reason to believe
22 that there had been any tampering with
23 the police files relating to the
24 Milgaard case. More he also was
10:57 25 interested in the type of reception I



1 had received when I requested access to
2 police files.

3 I told the Mayor that I had
4 received exceptional hospitality by the
10:58 5 police department and full cooperation
6 with respect to my requests for access
7 to their files. I outlined to him the
8 background of my request, the steps
9 taken to fulfil that request and the
10:58 10 reasons why I did not insist that a full
11 search of each microfilm tape be
12 conducted at the time of my initial
13 request. I had obtained information
14 from other sources which satisfied my
10:58 15 need for information and enabled an
16 assessment of the issues that had then
17 been raised by the applicant.

18 Upon the receipt of Mr.
19 Milgaard's second application I asked
10:58 20 Sgt. Pearson for another search."

21 I understand you wouldn't have any knowledge of
22 this particular memorandum, but it appears to
23 suggest that in 1990 an extensive search of
24 microfilm was not requested by Mr. Williams?

10:59 25 A Umm, I don't recall it. He had asked for, as he



1 identified in there, that we go through each of
2 those microfilms from beginning to end.

3 Q All right. I think, earlier in your testimony,
4 you indicated that that type of search might have
10:59 5 been done given that, in 1990, it appears that
6 Mr. Pearson received at least one file that you
7 thought came off the microfiche, and I'm wondering
8 if the explanation for that could simply be that,
9 in 1990 you were asked to do a computer search,
10:59 10 and if you had done that computer search what you
11 would have come up with would have been a hit for
12 (V5)-- (V5)---?

13 A Right.

14 Q And that was a 1970 rape. You would -- you could
10:59 15 have then gone to the microfilm quite easily and
16 provided that report?

17 A Yes.

18 Q All right. If we could go to 016097. This is a
19 September 9th, 1991 memorandum from Mr. Williams
11:00 20 to his file regarding a conversation he had with
21 you.

22 COMMISSIONER MacCALLUM: I missed the doc.
23 ID, I'm sorry?

24 MS. MONAR ENWEANI: I'm sorry, it's 016097.

11:00 25 COMMISSIONER MacCALLUM: Thanks.



1 BY MS. MONAR ENWEANI:

2 Q I'll read this to you and then ask you about it.

3 "On September 9, 1991

4 Inspector Quinn called to advise that a
11:00 5 portion of (V1)--- (V1-'s file
6 #101734/68 had been located. It
7 contained the statement of (V1)--- (V1)-
8 and two investigation reports. The 1970
9 file of (V5)-- (V5)--- had also been
11:00 10 retrieved. He added that the
11 computerized file listing displayed the
12 files of (V5)-- (V5)--- and Ms. (V2)---.
13 However, Ms. (V2)---'s file had not been
14 located. The search for it was still
11:01 15 underway.

16 Further, he added that

17 Ms. (V4)---'s file had not been located.
18 Inspector Quinn said that an analyst
19 would be assigned to examine all the
11:01 20 microfiche documents for 1968, 1969 and
21 1970 to locate the sexual assault files
22 involving Larry Fisher. In addition, an
23 analyst is examining all reported sexual
24 assaults between 1968 and 1970 to
11:01 25 catalogue the number of cases involving



1 the use of a weapon and the type of
2 weapon that was used.

3 He said that he would provide
4 an update on or before Thursday,
11:01 5 September 12, 1991."

6 Do you recall having this conversation with Mr.
7 Williams?

8 A I recall having a conversation regarding the fact
9 of what we were doing, and I don't recall all of
11:01 10 the particulars on it, but I recall the
11 conversation.

12 Q Right. So you would have been providing him with
13 an update of what you were doing and what you had
14 found to date?

11:02 15 A Right.

16 Q If we could turn to 333605. This document is a
17 September 11th, 1991 fax from Mr. Williams to
18 yourself, and he is enclosing the recent statement
19 of (V4)---- (V4)--- that's dated August 29th of
11:02 20 1991, and as well he provides you with a copy of a
21 1969 -- a January 31st, 1969 statement given by
22 (V4)---- (V4)---. Now I'm just wondering if you
23 have any recollection, at all, of being asked to
24 search for records in connection with a
11:03 25 complainant named (V4)---?



1 A I don't recall, specifically, that particular
2 name. However, after reviewing the, some of the
3 documents here, there was -- the name was there,
4 and there was obviously a request to search for
11:03 5 her, information related to her, and that's also
6 identified in that previous memo that I had
7 explained from the two central records
8 supervisors.

9 Q Yes. Umm, if we can look at 106110. This is an
11:03 10 investigation report prepared by Detective Bennett
11 dated January 31st of 1969. It reads:

12 "A radio call was received to
13 see a (V4)---- (V4)--- of 331 Ave. H.
14 So., in regards to an incident that took
11:04 15 place at 7:07 A.M. this date.

16 I interviewed her in regards to
17 this and a witness statement was taken
18 from her. There is no separate report
19 made on this as she would not have
11:04 20 complained about this untill hearing of
21 the murder."

22 Do you recall, as a result of your search
23 efforts, whether you -- what you concluded about
24 whether there was a (V4)--- file?

11:04 25 A My recollection, there was no occurrence report



1 related to (V4)---- (V4)--- as such, there is no
2 separate re -- file.

3 Q No separate --

4 A Separate file.

11:04 5 Q -- occurrence number?

6 A Right.

7 Q All right. If we could turn to 004368 at page 2.

8 I'm just going to read from a few documents,

9 Mr. Quinn, that explain how the matter of Larry

11:05 10 Fisher's files came to be referred to the

11 Saskatchewan Police Commission for an

12 investigation. This letter is September 13th,

13 1991, it's from Henry Dayday, Chairman of the

14 Saskatoon Board of Police Commissioners, addressed

11:05 15 to Mr. Bill Graham, Executive Director,

16 Saskatchewan Police Commission. It reads:

17 "At its regular meeting on

18 September 12, 1991, the Saskatoon Board

19 of Police Commissioners received a

11:05 20 report from A/Chief Montague regarding

21 allegations made by the Globe and Mail

22 Newspaper in an article dated August 29,

23 1991. A copy of the article and an

24 excerpt from the Board minutes are

11:06 25 attached.



1 The Board is hereby requesting
2 the Saskatchewan Police Commission,
3 under its powers set out in Section 11
4 of The Police Act, to enquire into the
11:06 5 allegations of tampering with files
6 which were made on August 29, 1991.

7 The Board and the A/Chief of
8 Police remain confident that there has
9 been no tampering with files and that
11:06 10 nothing improper or suspicious has
11 occurred. However, to be sure that the
12 citizens of Saskatoon retain confidence
13 in their police force, we believe that
14 an outside investigation is warranted."

11:06 15 And if we turn to the next page, page 3:

16 "The following is an excerpt
17 from the Minutes of Meeting of the Board
18 of Police Commissioners held on
19 Thursday, September 12, 1991."

20 And the excerpt reads:

21 "Alleged Missing Police Files re
22 Milgaard Case":

23 "A/Chief Montague reported to
24 the Board in some detail regarding the
11:06 25 Fisher files requested by the Federal



1 Department of Justice. He advised the
2 Board that it is important to note that
3 it is the Fisher files that have been
4 requested, not the Milgaard files. All
5 of the Milgaard files are intact.

6 The A/Chief explained that the
7 paper files of what were requested were
8 destroyed a number of years ago in the
9 course of ordinary file management.
10 However, it was the practice at the time
11 to microfilm the files before they were
12 destroyed. He further reported that the
13 police continue to search for the files
14 on the microfilm tape. In fact, extra
15 staff have been assigned to this work
16 and they are working double shifts.
17 They are viewing all of the old
18 microfilm tapes from 1968 to 1972.
19 There are about 150 of these tapes so
20 the search will take some time.

21 The A/Chief reiterated that
22 there is no evidence, in his opinion, of
23 tampering with files or any wrong doing.
24 He specifically requested that the Board
25 call in the Saskatchewan Police



1 Commission to investigate whether there
2 has been any tampering with files in
3 this matter. His reason was that the
4 Police Force feels that an outside
11:07 5 investigation is the only way to
6 counteract the allegations that have
7 been made against them."

8 Do you recall having any discussions with Acting
9 Chief Montague about possibly referring this
11:07 10 matter to the Saskatchewan Board of --
11 Saskatchewan Police Commission?

12 A I believe there was some discussion with Deputy
13 Chief Montague as it related to what we were
14 finding or hadn't found in relationship to the
11:08 15 search for the files, and also I guess it related
16 to the publicity that was occurring, and somewhere
17 in this particular time period there is a memo
18 that I had sent to Deputy Chief Montague outlining
19 what we had found during our, for our search for
11:08 20 the files and going through the microfiche and
21 during that period of time there was one, the
22 supplementary roll of microfiche for that year, I
23 believe it was '69, was not there, it was missing,
24 so there was a concern as to where that particular
11:09 25 roll of microfiche was, so there had been



1 discussion ongoing to the Commission for a
2 separate investigation.

3 Q All right. I'll ask you a little bit more about
4 that supplementary roll in a moment, but if I
11:09 5 could just turn you to a November 18th, 1991
6 memorandum. The document is 042831. This is a
7 memorandum that was prepared by Mr. Graham, the
8 Executive Director of the Saskatchewan Police
9 Commission, and I understand essentially from this
11:10 10 report Chairman Laing then authored the November,
11 1991 report?

12 A Right.

13 Q If I can just back up for a minute. I guess prior
14 to the Saskatchewan Police Commission becoming
11:10 15 involved, you had undertaken efforts to find
16 files. Did that simply continue once the
17 Saskatchewan Police Commission became involved?

18 A It -- yes, it did continue, but it was under their
19 mandate or under their direction.

11:10 20 Q All right. Just reading from page 1 of this
21 document:

22 "This particular
23 investigation was commenced after
24 considerable local and nation wide
11:10 25 publicity concerning David Milgaard and



1 attempts made by his lawyers to have his
2 conviction of murder retried. There has
3 been a well orchestrated media campaign
4 to keep this matter before the public.

11:11 5 During this whole affair a
6 group called the Centurion Ministries
7 followed up on the leg work that the
8 Milgaard group had done and an
9 individual by the name of Larry Earl
11:11 10 Fisher came to light. When Saskatoon
11 Police went back into their files to
12 recover files relating to Fisher they
13 ran into gaps in their files. The
14 matter was reported in the press and in
11:11 15 an effort to ensure an outside
16 investigation was carried out the
17 Saskatoon Board of Police Commission
18 passed a minute at a board meeting of
19 September 12th, 1991."

11:11 20 And if we can turn to page 5 of this document,
21 this appears to be a letter dated September 18th,
22 1991 from Bill Graham to Mayor Henry Dayday, it
23 states:

24 "In response to your
11:11 25 Commission's request that the



1 Saskatchewan Police Commission inquire
2 into allegations of tampering with files
3 related to the Fisher files, be advised
4 that an investigation will be
11:12 5 undertaken.

6 In due course the Commission
7 will respond to your Board relating its
8 findings. The Commission has asked for
9 a report on this matter in four to six
11:12 10 weeks and while one can never project
11 the length of any investigation every
12 effort will be made to complete this
13 matter as soon as possible."

14 And if I could now turn you to page 8 of this
11:12 15 document, it appears that at some point in
16 September you would have met with Mr. Graham and
17 Mr. Treble, and I'm going to read from portions
18 of Mr. Graham's memorandum here, but do you
19 recall any particulars about your first meeting
11:12 20 with members of the Saskatchewan Police
21 Commission?

22 A I recall meeting with them. The purpose of the
23 investigation was discussed and I was, I guess,
24 delegated as their contact person or their liaison
11:13 25 person for the purpose of the investigation. At



1 that particular time I believe I was still working
2 in the CID section.

3 Q All right. Reading from page 8, Mr. Graham's
4 memorandum indicates that:

11:13 5 "At 9:30 am, September 19,
6 1991 Mr. Treble and the executive
7 director met with Deputy Chief M.
8 Montague who was acting chief of police
9 after the retirement of Chief Penkala
11:13 10 and prior to Mr. Owen Maguire taking
11 office.

12 Montague briefed us on the
13 involvement of the Force in supplying
14 the federal Department of Justice with
11:14 15 files relating to David Milgaard.
16 Mr. Eugene Williams, a lawyer with the
17 department and Sergeant Rick Pearson,
18 Royal Canadian Mounted Police Saskatoon
19 have worked on the Milgaard case. When
11:14 20 the request was made by the Department
21 of Justice for files relating to
22 Milgaard, Chief Penkala had his staff
23 indexed and placed this entire file into
24 ring binders. Subsequently this work
11:14 25 simplified the research work for



1 Williams and Pearson. Pearson advises
2 that they have had open-door
3 co-operation with the Saskatoon police
4 on both matters of Milgaard and Fisher.

11:14 5 Montague advised that he had
6 assigned Inspector John Quinn to head
7 the search for the Fisher files. He
8 called Quinn into our meeting and
9 advised him that we had access to
11:14 10 anything and everything that we asked
11 for. This offer has extended after
12 Chief Maguire took office."

13 On to page 9:

14 "At 10:10 am, September 19th, 1991,
11:14 15 Quinn, Treble and Graham resumed the
16 briefing. Quinn advised that he had
17 been assigned to locate files relating
18 to Larry Earl Fisher. He advises that
19 files stored in dead storage are on site
11:15 20 and that there was a system of
21 microfilming of hard copy and that to
22 date they had scanned film from 1968
23 through 1971. They had retrieved what
24 appears to be a complete file of a
11:15 25 complaint of rape by one (V5)--



1 (V5)----- (V5)--- file number 1183/70
2 and statements relating to an
3 investigation into a rape complaint for
4 (V1)--- (V1)-. Quinn provided us with
11:15 5 complete copies of these files. Copies
6 had been previously given to Williams."

7 If I can just stop there for a minute, and if we
8 could refer briefly to document 330902, this is a
9 lengthy document and it appears to be the working
11:16 10 file of the Saskatchewan Police Commission?

11 A Okay.

12 Q And I'll direct your attention to page 150 of that
13 document. It appears that here we have the
14 information that the Saskatoon police would have
11:16 15 uncovered to date on Larry Fisher and his
16 Saskatoon victims, and at page 150 we've simply
17 got a photocopy of a card here that says:

18 "See supplementary list for this
19 occurrence."

11:16 20 Can you tell me what this indicates?

21 A On the microfiche, or the rolls of microfiche, if
22 there was a file that was not in sequential order
23 or was not available for microfiching at that
24 time, there would be a card placed in the
11:17 25 microfiching processor and a photograph taken of



1 it and that would appear on the roll in place of
2 that file. Now, at the end of the microfiching
3 process for that year, every file that did not
4 appear in sequential order would have been placed
11:17 5 on what we refer to as a supplementary roll and
6 that, all those files would have then appeared on
7 that particular roll, or should appear on that
8 roll.

9 **Q** So there should have been a supplementary roll for
11:17 10 each year?

11 **A** For each year there should have been a
12 supplementary roll of the files that were not in
13 sequential order.

14 **Q** And when we reviewed Laing's report outlining the
11:17 15 findings of the police, that report indicated that
16 with respect to (V2)-----, a hit had been received
17 on the computer, but that her file couldn't be
18 located and yet there was a reference to see
19 supplementary list, so can we conclude that this
11:18 20 relates to the (V2)----- file?

21 **A** I would say yes because where her file number
22 should have been, there was this card in that
23 place. I can't tell by looking at this because it
24 doesn't refer to the occurrence number.

11:18 25 **Q** Yes.



1 A Knowing the process that was undertaken, I would
2 gather that that was the file that was there in
3 place of her file.

4 Q All right. And then if I can refer you to page
11:18 5 151, page 151 through to page 160 -- perhaps I'll
6 describe what these documents are, but it
7 appears -- it appears to me that this would be a
8 portion of the (V1)- file that was found. If we
9 look at page 151, this is an investigation report
11:19 10 relating to (V1)-, page 152 is another
11 investigation report relating to (V1)-, page 153
12 we have a Saskatoon police exhibit and seized
13 article record, and then page 154 through to 160
14 are a handwritten statement of (V1)--- (V1)-.
11:19 15 Could this be the portion of the (V1)- file that
16 the police found?

17 A Yes.

18 Q On the microfilm search. And then if we go to
19 page 161 and the following 53 pages, this appears
11:19 20 to be the full file relating to the 1970 rape of
21 (V5)-- (V5)---. Do you recall that that would
22 have been provided to Mr. Graham?

23 A Yes, it would have been provided to Mr. Graham.

24 Q All right. If we can turn back to Mr. Graham's
11:20 25 memorandum, which is 042831, I'm looking at page



1 15, the document indicates:

2 "On September 25, 1991, at our request,
3 Inspector Quinn turned over four
4 Recordak film records:"

11:20 5 He lists them there and says:

6 "These are the microfilms which
7 numerically encompass the files in
8 question."

9 And do you recall providing that?

11:21 10 A Yes, I do.

11 Q All right. There's just one other document I
12 would like to refer you to in Mr. Graham's
13 memorandum and if we could look at page 39:

14 "On October 10, 1991, Constable Lorne G.
11:21 15 Gelowitz, Saskatoon police crime
16 analyst, and the member in charge of the
17 actual search of the microfilm gave me a
18 report on exactly what his involvement
19 is in this search. Gelowitz is a very
11:21 20 competent constable and certainly I feel
21 that if the reports were microfilmed he
22 would be the individual that would find
23 them. A copy of his report is included
24 at this point."

11:21 25 If we then turn the page, we see there is an



1 would respectfully like to submit the
2 following synopsis of my involvement.
3 Having been tasked with co-ordinating a
4 search for specific files over a defined
11:23 5 parameter of time, which was identified
6 as being July, 1968 to December, 1972,
7 as well as the last two and any
8 miscellaneous tapes for the years 1973 -
9 1979 inclusive. I began with firstly
11:23 10 identifying the files that were being
11 sought. They were:"

12 (V1)-, (V2)-----, (V3)-----, (V5)---

13 "The examination of the
14 microfilm was conducted by myself and
11:24 15 four other police personnel, two special
16 constables, and two civilian members."
17 He then provides their names. Onto page, the
18 next page, which is 41 of the document:

19 "In all, 151 tapes were
11:24 20 examined which contained 61,600 files.
21 Of the files which were targeted,
22 occurrence #68-10173 ((V1)-) was
23 located, however only a written
24 statement and two investigation reports
11:24 25 were attached. Also located was



1 occurrence #70-1183 ((V5)---) in its
2 entirety.

3 The initial instructions that
4 were given to myself which were followed
11:24 5 throughout the entire examination of
6 tapes were:

7 1) To view every tape within the
8 identified parameters to ascertain
9 whether or not the targeted files were
11:24 10 included.

11 2) To check and confirm whether the
12 file numbers which were labelled on the
13 tapes actually correspond to the
14 beginning and ending of every tape.

11:25 15 3) To document any major discrepancies
16 on the tapes that pertain to the
17 sequence of filing.

18 One area that was not
19 identified initially and has since been
11:25 20 brought to my attention was the actual
21 number of files that were not included
22 in the continual sequence of files that
23 were examined. I have discussed this
24 with the other personnel who assisted in
11:25 25 the search and there was no record



1 maintained of individual files missing
2 unless a large block of files was
3 missing and/or out of sequence.

4 If a decision was to be reached
11:25 5 with respect to ascertaining the actual
6 number of files missing from the total
7 number of files searched, I believe that
8 it would be essential to clarify whether
9 or not the parameters of the search
11:25 10 would be limited to include files out of
11 sequence or files not included on the
12 microfilm at all, as the task would be
13 very labour intensive.

14 In conclusion, after having
11:26 15 conducted the examination of the tapes
16 which were identified as being the most
17 probable of containing the files which
18 we searched for two of four occurrences
19 were not located. The whereabouts of
11:26 20 the two files that have not been located
21 would appear to have been included in a
22 supplementary list which was indicated
23 on the microfilm. However, the
24 whereabouts, or actual existence of such
11:26 25 a supplementary list has not been



1 ascertained.

2 This concludes my involvement
3 to date other than maintaining an
4 ongoing file of media experts and public
11:26 5 commentary with respect to the Milgaard
6 Investigation."

7 If I can take you back to the second page of
8 Constable Gelowitz's report, I'm wondering if you
9 can assist in explaining his conclusion. He
11:27 10 indicates that two of four occurrences were not
11 located and then he mentions a supplementary
12 list. Are you able to expand on this conclusion?

13 A I think I can add that with the appearance of that
14 card on the microfiche, which was the practice at
11:27 15 the time, that there should have been a
16 supplementary list. If there was files in that
17 year that would be on microfiche and they were not
18 there, they should have been on the supplementary
19 list, I think that's where he's drawing that, I
11:27 20 guess, assumption, but --

21 Q Right.

22 A -- that was the normal procedure.

23 Q Right.

24 A However, when he went to review the supplementary
11:27 25 roll of microfilm, it was not available for that



1 year, it was missing.

2 Q Okay. So your understanding is that the
3 supplementary roll of microfilm for the year 1968,
4 you weren't able to locate that?

11:28 5 A It was never located.

6 Q It was never located?

7 A Right.

8 Q Do you know if supplementary microfilm lists for
9 other years were located?

11:28 10 A For every year that the microfiche was --

11 Q Was examined.

12 A Examined? There was a supplementary role for each
13 year.

14 Q All right. Would it be fair to say that at this
11:28 15 point your involvement in searching for records
16 pertaining to Larry Fisher or any of his victims
17 was effectively over?

18 A Yes, yes.

19 Q And at this time there is -- we don't yet have the
11:28 20 report of the Saskatchewan Police Commission and I
21 just want to ask you if as a result of your
22 involvement in the search, did you come to any
23 conclusion as to why not all four of those files
24 could be located?

11:29 25 A Well, there was, I guess, a number of reasons that



1 had gone through, gone through my mind at the
2 time. First of all, we didn't know that they had
3 never been microfiched because the supplementary
4 roll was missing, but then there was the
11:29 5 possibility that the files, you know, there was
6 that possibility they hadn't been microfilmed and
7 that would have been due to just improper handling
8 in the Central Records portion of record keeping.

9 Q Could that mean that someone had taken a copy of
11:29 10 the file from Central Records and not returned it?

11 A It's possible that somebody could have taken that
12 file out for a purpose and it hadn't been brought
13 back. Now, during that time there was a number of
14 different moves within the department and it's
11:30 15 possible that the file could have got lost or
16 misplaced and ended up being in one of the boxes
17 of files that were being purged, which was kind of
18 an ongoing process from one year to the next.

19 Q All right. As a result of your search, did you
11:30 20 have any view on the allegations that were being
21 made that files were not there because of a
22 cover-up or because of tampering?

23 A My opinion was that there was no action on the
24 part of any of our members to cover up any portion
11:31 25 of the investigation, whether it be the Fisher



1 investigation or the Milgaard investigation or the
2 Gail Miller file, and I had no reason to suspect
3 that there had been any tampering. With the files
4 that we found, it went back to that supplementary
11:31 5 roll missing and that was my biggest concern at
6 the time.

7 Q All right. If we could turn again to Chairman
8 Laing's report, 000263, this is his November, 1991
9 report back to the Saskatoon Board of Police
11:32 10 Commissioners. I'm going to read a portion of
11 this report starting at page 3 regarding Saskatoon
12 City Police Filing System and then I'm just going
13 to inquire whether the information fits with your
14 recollection of the record system. I think this
11:32 15 will provide us with some context.

16 "In the years 1968-1971, the
17 Saskatoon City Police Department had a
18 policy of retaining serious Criminal
19 Code offence files for a period of 10
11:32 20 years. It was not until March 10, 1982
21 that the Saskatchewan Police Commission
22 enacted municipal police report forms
23 and filing system regulations which
24 provided for the same 10-year retention
11:32 25 period for serious Criminal Code



1 offences, and for indefinite retention
2 of unsolved serious Criminal Code
3 offences.

4 The system of reporting and
5 filing at the Saskatoon City Police
6 Department in the late 1960s consisted
7 of the following:

8 1. Four copies of each investigation
9 report were produced.

10 (a) One copy was for the central record
11 filing system and was not supposed to
12 leave central records except under
13 exceptional circumstances and then only
14 with the proper notation of where the
15 file was located.

16 (b) Two working copies would be
17 available to investigators working on
18 the file, which working copies were not
19 part of a permanent record system.

20 (c) One copy was available for
21 information and administrative purposes.

22 2. When a file was opened as a result
23 of a complaint, an index card was
24 prepared indicating the complainant's
25 name, and an occurrence number was



1 assigned to that matter. Each criminal
2 investigation file acquired a sequential
3 occurrence number for that year. In
4 other words, on January 1 of each year,
11:33 5 a new numbering system commenced and
6 each occurrence in the course of that
7 year was sequentially numbered. If a
8 person was convicted of the offence,
9 that person's name was to be
11:34 10 cross-referenced on the index card to
11 the name of the victim.

12 3. In central records, hard copy files
13 were retained for the current year and
14 the two immediately preceding years.
11:34 15 After three years, if the file was not
16 active, it was moved to a locked storage
17 room.

18 In approximately 1970 microfilm
19 equipment was purchased by Saskatoon
11:34 20 City Police Central Records Department
21 and thereafter attempts were made to
22 record all serious criminal
23 investigation files on microfilm prior
24 to destruction of the file. This
11:34 25 activity was carried out by central



1 records staff as time permitted. It was
2 not a highly structured activity. This
3 activity would have commenced in 1970
4 and the oldest files were the first to
11:34 5 be microfilmed. Each microfilm cassette
6 would have written on it the beginning
7 sequential number and the end sequential
8 number contained on that particular
9 cassette. Unfortunately, no date
11:35 10 appeared on the microfilm cassette
11 indicating when the same was filmed.
12 With respect to files dating from the
13 1968-1971 period, the best estimate
14 available of when such files would have
11:35 15 been microfilmed is in the period
16 between 1975 and 1980.

17 It is apparent that during the
18 microfilming process, certain files were
19 missing from their sequential order at
11:36 20 the time the microfilming was taking
21 place. In such a case, the person doing
22 the microfilming would microfilm a card
23 which card stated 'see supplementary
24 list'. The intention was that any files
11:36 25 that were subsequently returned to



1 central records would be microfilmed and
2 the microfilm labelled 'Supplementary
3 List'. Microfilm tapes entitled
4 'Supplementary List' were located and
5 reviewed during the course of this
6 investigation.

7 In the year 1976, the Saskatoon
8 Police Department moved from its old
9 building to a new building next door.
10 All files held in dead storage should
11 have been moved at this time. There are
12 no quality control records that
13 determine if in fact this occurred. At
14 this same time, all index cards were
15 removed from drawers and placed in a
16 mechanized cardveyor system. The move
17 from the old building to the new
18 building was accomplished in
19 approximately 1 1/2 days.

20 In 1981, the Police Department
21 converted its record keeping system onto
22 computer. At this time there were over
23 300,000 index cards to load onto the
24 computer. This function was carried out
25 by central records staff and six extra



1 staff persons who were hired to load
2 such information on two shifts from 4
3 p.m. to 8 a.m. each day. The index
4 cards at this time were also purged to
11:37 5 some extent. Unfortunately, there is no
6 one that can say today the exact
7 criteria applied to the purging process.
8 However, it is established that one of
9 the criteria was to only load
11:37 10 information from index cards where there
11 was an existing file. If no file was
12 located, the information on the index
13 card was not loaded into the computer.
14 The index cards were kept for one year
11:37 15 after loading of the information was
16 complete at the end of 1981. At the end
17 of 1982 the index cards were destroyed.

18 After the information from the
19 index cards was loaded onto the
11:38 20 computer, there was a very limited
21 number of people who could authorize a
22 deletion of an incident from the system.
23 From 1981 to 1987, the deletion program
24 was on a separate diskette which was
11:38 25 available only to two supervisory people



1 in central records. These people
2 indicate that there would be absolutely
3 no reason to delete specific information
4 from an occurrence file from the
11:38 5 computer and this in fact was not done.
6 The deletion program was available to
7 purge files after the 10-year retention
8 period, and not to delete specific
9 incident information.

11:38 10 From 1987 on, the computer
11 system was upgraded to require the name
12 and password of each user, and the
13 computer provided a maintenance trail of
14 all additions and deletions to the
11:38 15 system which maintenance trail produced
16 a hard copy once a month for review by
17 the civilian manager of the central
18 records department. This person has
19 been in place since 1982 and states to
11:38 20 his knowledge there has never been a
21 deletion of specific incident
22 information from the computer unless the
23 same was placed in the computer in error
24 or unless it was the subject of a
11:39 25 general purge of files for a specific



1 year."

2 And then if we could just turn to page 12 of that
3 same document:

4 "The Attorney-General's files
11:39 5 in the City of Regina contain the four
6 certificates of conviction of Larry
7 Fisher. There is no record on the file
8 that indicates such certificates of
9 conviction were ever transmitted to the
11:39 10 Saskatoon City Police Department."

11 So, Mr. Quinn, I just -- I simply wanted to ask
12 you if the report, in your view, sets out or
13 explains how Saskatoon City Police records were
14 maintained and the evolution of that
11:40 15 record-keeping system?

16 A That record is quite, quite accurate.

17 Q All right.

18 A I should note, on the initial part there where it
19 refers to the number of copies of reports that
11:40 20 were generated, it only speaks of the
21 investigation report. There was also four copies
22 of the occurrence report generated, it doesn't --
23 that's not noted in that report.

24 Q Okay? And where would, I'm sorry, where would
11:40 25 those four copies then end up?



1 A They were distributed the same as the
2 investigation.

3 Q All right.

4 A But he only -- that report only refers to the
11:40 5 investigation reports, --

6 Q Yes.

7 A -- but within the police genre, when we -- we
8 refer to an occurrence report as the initial
9 report and anything subsequent to that is an
11:40 10 investigation report.

11 Q Thank you.

12 COMMISSIONER MacCALLUM: So that 300,000
13 pages, or something, wouldn't include the extra
14 copies that were generated?

11:41 15 A Umm, 300 and --

16 COMMISSIONER MacCALLUM: They said there
17 was, I don't know, somewhere in there it spoke of
18 300,000 pages.

19 BY MS. MONAR ENWEANI:

11:41 20 Q I think --

21 A I think we're, we're talking of different things
22 there. On the first page it says:

23 "The system of reporting and
24 filing at Saskatoon City Police
11:41 25 Department in the late 1960s consisted



1 of the following:

2 1. Four copies of each investigation report
3 ...",

4 I guess what I was trying to clarify there was
11:41 5 that the investigation report, it was a separate
6 report from the occurrence report, and the
7 occurrence report also had four copies.

8 Q All right.

9 A So it was just something that was -- something
11:41 10 that was missed on there.

11 Q Okay. Can we turn to page 6. There is a
12 reference that:

13 "In 1981, the Police
14 Department converted its record keeping
11:41 15 system onto computer. At this time
16 there were over 300,000 index cards to
17 load onto the computer."

18 Would each of those index cards represent a file
19 or an occurrence number?

11:42 20 A It would have represented an occurrence number, or
21 a complainant, and an occurrence number would have
22 been on that. Any subsequent follow-up, like if
23 somebody had been charged on that occurrence
24 number, their names should have showed up, should
11:42 25 also appear on that card as a cross-reference, --



1 Q Okay.

2 A -- plus the individual charge would get an index,
3 would also get an index card, and it should have
4 been cross-referenced with an occurrence number.

11:42 5 Q All right. So, if there was a complaint of rape,
6 there would be an index card created with the name
7 of the complainant?

8 A Along with the occurrence number.

9 Q All right.

11:42 10 A If an individual was subsequently charged with
11 that offence, when -- and he was convicted, then
12 his name would subsequently be placed on that
13 initial card as charged, and then he would also
14 get an index card in the system.

11:43 15 Q All right. And the reason for placing the name of
16 the convicted person on the index card with the
17 name of the complainant and the occurrence number
18 is just to have better searching ability?

19 A Better searching, a way to cross-reference. Umm,
11:43 20 I guess if we were looking for information and
21 somebody phoned in and said "I reported, I made a
22 complaint", if you went to that card you could
23 obviously -- we would also get the information on
24 whether there had been a charge laid in it, on
11:43 25 that particular case, or there had been a



1 conviction recorded on it.

2 Q Okay. And so we can assume that Larry Fisher's
3 name was not entered on any index card in the
4 system or -- and it wasn't cross-referenced with,
11:43 5 for example, (V5)---, because when you did a
6 search of the computer index there were no hits
7 for Larry Fisher's name?

8 A That's correct.

9 Q All right.

11:44 10 COMMISSIONER MacCALLUM: Could I just ask
11 something before I forget, sir.

12 So for a given complaint there
13 would be many copies, or at least several copies
14 which were never -- detailing information of the
11:44 15 complaint which would never find their way back
16 to the official records, they would be
17 distributed amongst various investigators and
18 various offices; is that right? There were four
19 occurrence reports and four investigation
11:44 20 reports?

21 A Yes. One copy of the occurrence report would have
22 remained in the central records; --

23 COMMISSIONER MacCALLUM: Yes?

24 A -- there was one copy was an administrative copy,
11:44 25 that went as an information to the chief or the



1 deputy; --

2 COMMISSIONER MacCALLUM: Right?

3 A -- and then two would go to the section that
4 was -- would have been tasked with investigating.

11:45 5 COMMISSIONER MacCALLUM: Right.

6 A If memory serves me correct, back in '69 one copy
7 would have stayed with the investigator, one copy
8 would have likely stayed with the -- if it went to
9 CID, with the detective sergeant who would
11:45 10 supervise the overall investigation.

11 COMMISSIONER MacCALLUM: Uh-huh?

12 A When the officer had completed his investigation
13 reports, those reports were to go back to central
14 records and then the central records staff would
11:45 15 do a review of the completed file, and any items
16 that did not appear on the file in central records
17 would be taken off the investigator's file and
18 placed on the central records copy.

19 COMMISSIONER MacCALLUM: Okay. And --

11:45 20 A And then, subsequently, it would be destroyed.

21 COMMISSIONER MacCALLUM: Right. And did it
22 happen that copies remained elsewhere except
23 being returned to central registry -- or central
24 records I mean?

11:45 25 A Umm, I --



1 COMMISSIONER MacCALLUM: I mean was there,
2 were people conscientious about, when a file was
3 concluded, about returning it all to the central
4 records, or did they simply keep copies
11:46 5 themselves?

6 A No, that was -- I have no way of knowing, but that
7 was the process was that if, use myself as an
8 example when I was in CID around that time, if I
9 had been investigating a file and had left my
11:46 10 investigation reports and the detective sergeant,
11 I had found that I was unable to successfully
12 conclude or had arrested somebody on a particular
13 file and left my initial -- or my final report,
14 and it went through my supervisor and it was
11:46 15 concluded, then he would -- the process then was
16 that concluded file was to go back to central
17 records.

18 COMMISSIONER MacCALLUM: Yes?

19 A Otherwise, it stayed on the work list as a file --

11:46 20 COMMISSIONER MacCALLUM: Uh-huh?

21 A -- as a file that would have still been assigned
22 to me.

23 COMMISSIONER MacCALLUM: Yes?

24 A So supervisors supervising their people would
11:47 25 have -- would be coming back to the investigator



1 saying "where are the reports?"

2 COMMISSIONER MacCALLUM: Uh-huh?

3 A They were all validated at that time.

4 COMMISSIONER MacCALLUM: What I am driving
11:47 5 at is whether there was any practicable way of
6 hiding a file because, you know, assuming
7 somebody wanted to do that, he went to central
8 records, for example, and lifted the file out and
9 didn't return it, how could he be sure that
11:47 10 copies that were made and intended to be returned
11 to central records were, in fact, returned? For
12 all he knew, they might still be out there
13 somewhere, in somebody's office?

14 A Umm, the working copies could be with the
11:47 15 investigators. Any copy removed from the central
16 records, the original file, should have been
17 logged. There should -- there was a system in
18 place that if -- that was the only access to the
19 file that was available, that a person could get
11:47 20 it, but it had to be signed out to the
21 investigator.

22 COMMISSIONER MacCALLUM: Uh-huh.

23 A And then the central records had a track on who
24 had that particular file, and they could go back
11:48 25 to that person and ask them for it back. It



1 wasn't a, I shouldn't say, it wasn't a usual
2 practice. Usually, in most cases, it related to
3 older files that were -- had, apparently had been
4 closed, could have been closed off, and something
11:48 5 had come up in another investigation and there was
6 a need to review it or go through it, another file
7 that was in central records.

8 COMMISSIONER MacCALLUM: Okay. So, to get
9 back to your question, counsel, you said you
11:48 10 could assume that the Fisher name was not on an
11 index card in the system, nor wasn't
12 cross-indexed, and I think the witness said
13 "yes", that was true?

14 MS. MONAR ENWEANI: Yes.

11:48 15 COMMISSIONER MacCALLUM: Yeah.

16 BY MS. MONAR ENWEANI:

17 Q And I believe you indicated that the reason for
18 that was, that you would know that was because
19 when you did a computer search using the name
11:48 20 Larry Fisher, no information was retrieved?

21 A It -- Larry Fisher's name never came up.

22 Q All right. If I could turn your attention to page
23 15 of 000263. This -- these are the conclusions
24 reached by the Saskatchewan Police Commission:

11:49 25 "1. While the investigation has not been



1 able to explain in detail why the files
2 with respect to Occ. No. 10910 ...",

3 (V2)-----:

4 "... and 11435/68 ...",

11:49 5 (V3)-----:

6 "... and part of the file for Occ. No.
7 10173/68 ...",

8 which is (V1)-:

9 "... did not end up on microfilm, there
11:50 10 was no evidence uncovered in the course
11 of this investigation that suggests that
12 anyone deliberately attempted to avoid
13 microfilming these files. It appears
14 obvious from the significant number of
11:50 15 files missing from microfilm that the
16 policy of always maintaining one
17 complete copy of a file in central
18 records was not adhered to. The fact
19 that 1 1/2 of the files ended up on
11:50 20 microfilm suggests that administrative
21 handling of the files including a move
22 to new premises is responsible for the
23 fact the missing files were not
24 microfilmed.

11:50 25 2. There is no evidence that anyone has



1 tampered with the computer records of
2 the Saskatoon City Police Department
3 since the same were computerized in
4 1981. The investigation discloses there
11:50 5 was considerable discretion allowed the
6 persons who were responsible for
7 converting the manual index card system
8 on to computer. It was more than 10
9 years from the date of the offences at
11:51 10 the time the conversion took place.
11 When files could not be located and
12 where there was no cross-reference to a
13 criminal, as in the case of the files
14 here under consideration, the discretion
11:51 15 was wide enough to allow for a decision
16 not to transfer the information onto the
17 new system. However, it is to be noted
18 that two of the four names of the
19 victims and their occurrence numbers
11:51 20 were loaded onto the new system.

21 3. The fact that Larry Fisher's name does
22 not appear in the computer record system
23 of the Saskatoon City Police Department
24 appears to be due in part to the fact
11:51 25 that the Saskatoon City Police



1 Department was not involved in
2 processing the guilty pleas of Mr.
3 Fisher beyond supplying a summary of
4 facts with respect to the offences. It
11:51 5 is fair to say that some verbal
6 communication occurred between the
7 Attorney-General's Department and the
8 Saskatoon City Police Department on the
9 fact of these guilty pleas as evidenced
11:52 10 by the knowledge of the investigator who
11 attended in Winnipeg to take Mr.
12 Fisher's statements. However, this
13 person was not the person who had
14 investigated the offences, and it
11:52 15 appears no written memorandum was
16 produced internally, or transmitted from
17 the Attorney-General's Department which
18 would 'trigger' the retrieval of a file
19 for recording and indexing purposes."

11:52 20 And if we turn to the next page, page 18:

21 "The investigation discloses
22 the importance of communication and
23 record keeping in police work, and
24 problems that can arise when an
11:52 25 appropriate standard is not maintained.



1 Considerable improvement has been
2 achieved in record keeping by all police
3 departments in the province since the
4 early 1970s, and in particular since the
11:53 5 Commission issued The Municipal Police
6 Report Forms and Filing System
7 Regulations in the year 1982."

8 And I wanted to ask you, did you have a chance to
9 review these conclusions when this report was
11:53 10 released in November of 1991?

11 A Yes, I believe I did.

12 Q All right. And did you concur with the
13 conclusions that were released?

14 A Yes.

11:53 15 Q All right. And I just, I have just one question.
16 Conclusion number 3, which appears at the bottom
17 of page 16 and continues on to page 17, there is a
18 reference here to an investigator having attended
19 in Winnipeg to take Mr. Fisher's statements, and
11:54 20 do you have any recollection or knowledge of who
21 that would have been?

22 A I know, after the fact, who it was. I believe
23 that was Sergeant Ed Karst of the police service,
24 and I believe it was Inspector Elmer Nordstrom.

11:54 25 Q All right. And is the gist of this paragraph



1 basically that, although we now know that Mr.
2 Fisher was investigated in Winnipeg subsequent, or
3 interviewed -- sorry -- in Winnipeg, subsequent to
4 that interview, there appears to have been no
11:54 5 paper generated which would have led to Larry
6 Fisher's name being inputted on any index cards?

7 A From what we found, there was no -- from the files
8 we've found, there was no reference to Mr. Fisher
9 on the files, so there was nothing on the file to
11:55 10 indicate that the reports had been left and
11 attached to those files.

12 Q All right.

13 I don't have much more for
14 Mr. Quinn, I'm wondering if you would like me to
11:55 15 finish, or if we should break for lunch?

16 COMMISSIONER MacCALLUM: Oh, you can
17 finish.

18 BY MS. MONAR ENWEANI:

19 Q Can we turn to document 060939. Mr. Quinn, this
11:55 20 is a letter dated December 15th, 1992, it's from
21 Chief Superintendent Egan to Chief Maguire, and it
22 appears to indicate that an RCMP investigation is
23 going to be taking place. The first paragraph
24 reads:

11:56 25 "Further to our telephone



1 conversation this date, I would like to
2 confirm that Inspector Sawatzky and
3 Sergeant Williams are being tasked with
4 investigating the allegation that there
11:56 5 was criminal wrongdoing on the part of
6 Saskatchewan Justice and the police
7 during the initial Milgaard
8 investigation."

9 "It would be most appreciated
11:56 10 if you are able to designate someone
11 within your department who will serve as
12 the contact person with our
13 investigators."

14 And then if we have a look at 060947. This
11:56 15 appears to be a letter which was copied to you,
16 it's December 22nd, 1992, written by Chief of
17 Police Owen Maguire back to the RCMP. The letter
18 indicates that:

19 "Inspector John Quinn, Officer i/c
11:56 20 Internal Investigations, has been tasked
21 with providing all assistance required
22 to your investigators.

23 Would you please have Inspector
24 Sawatzky deal directly with Inspector
11:57 25 Quinn."



1 So it appears that you were designated as the
2 contact person within Saskatoon City Police to
3 assist --

4 A Yes.

11:57 5 Q -- the RCMP?

6 A Again.

7 Q And so did you end up, then, having a lot of
8 involvement?

9 A A fair amount of involvement to provide assistance
11:57 10 to Inspector Sawatzky and, I believe it was,
11 Sergeant Rick Pearson.

12 Q All right. And can you describe for us generally,
13 can you recall any specific examples of the type
14 of assistance or the things that you would have
11:57 15 been requested to do?

16 A I think in some, one occasion I think I provided
17 them a background on a particular officer that was
18 involved in the investigation, and I guess it
19 would be if they needed access to, obviously,
11:58 20 files or material like that, I would be providing
21 that to them.

22 Q Okay. Could I turn your attention to document
23 054563 at page 11. This is an excerpt from an
24 RCMP continuation report dated September 16th of
11:58 25 1993, and it reads:



1 "Sgt. Dressler advises that
2 through enquiries and document analysis,
3 he has been able to determine the
4 identity of the source within the
11:58 5 Saskatoon Police Department. This
6 source has always been a concern to this
7 investigation and we have attempted to
8 reveal the source's identity so that the
9 source could be interviewed. The
11:58 10 purpose of any interviews with the
11 source would be to confirm and document
12 information provided to Centurion
13 Ministries by the source. Previously
14 this source had provided information
11:59 15 concerning the climate within the
16 Saskatoon Police Department at the time
17 of the Gail Miller murder. As well, it
18 is felt this source could provide
19 information about the missing files from
11:59 20 the department."

21 Then, down at the bottom of that page:

22 "On 93-09-21, S/Sgt. Tost and
23 I travelled to Saskatoon and met with
24 Chief McGuire. During this meeting, we
11:59 25 advised him of the member concerned and



1 also provided him with documentation
2 which supports our belief that Sgt.
3 Vanin was the source within the
4 Saskatoon Police Department. After the
11:59 5 meeting, Chief McGuire requested we meet
6 with Insp. Quinn of Saskatoon Police
7 Department, Internal Affairs Division
8 and provide him with the circumstances
9 surrounding our learning the identity of
11:59 10 this source.

11 After our meeting, Insp. Quinn
12 advised he would prepare some background
13 information to enable us to prepare to
14 interview Sgt. Vanin."

12:00 15 Would this be indicative of the example you just
16 provided?

17 A Yes.

18 Q All right. And if I could quickly turn to
19 document 054574. This is a letter dated September
12:00 20 27th, 1993 authored by you, Mr. Quinn, and this
21 would be, I take it, the background information --

22 A Yes, that's correct.

23 Q -- you provided regarding Sergeant Vanin?

24 A Yes.

12:00 25 Q If we can then turn to 054563, page 9. The date



1 on this report is September 28th of 1993, it
2 reads:

3 "Insp. Sawatzky & S/Sgt.

4 Tost meet Insp. John Quinn, S'toon P.D.

12:01 5 this afternoon. Provided with a brief

6 overview of S/Sgt. Quinn's service ...",

7 I think that should read Vanin:

8 "... i.e. what departments he has served
9 in and dates.

12:01 10 Discuss with Insp. Quinn if

11 Vanin acknowledges the fact that he did

12 divulge information and offer files for

13 viewing to Joyce Milgaard and Centurion

14 Ministries investigator we would advise

12:01 15 him that he may be subject to an

16 internal investigation. Therefore we

17 would undoubtedly be called as

18 witnesses. We would afford him a

19 cautioning and the opportunity to seek

12:01 20 legal counsel even though we were not

21 about to accuse him of any criminal act.

22 Insp. Quinn advises that this
23 was satisfactory and proper.

24 Arrangements made to conduct

12:02 25 the interview the following morning at



1 09:30."

2 And if we turn to page 8 of that document, this
3 appears to be the next day, September 29th, 1993:

4 "Insp. Sawatzky and S/Sgt.

12:02 5 Tost meet with Insp. Quinn at the S'toon
6 City Police Dept. We are provided with
7 an office on the main floor.

8 Insp. Quinn brings S/Sgt. Vanin
9 into the office and introduces us to him
12:02 10 at 09:35 and Quinn departs."

11 This report then goes on to indicate what
12 happened when the officers met with Sergeant
13 Vanin at the end of the report, I'm looking now
14 at page 4:

12:03 15 "The interview terminated at
16 10:15 a.m.

17 Met with Insp. Quinn and
18 advised him of the results of our
19 interview."

12:03 20 Does that document fit with your recollection of
21 --

22 A Yes, it does.

23 Q -- meeting with the RCMP?

24 A Yes.

12:03 25 Q Do you recall anything further arising out of this



1 meeting, and in particular, do you recall if you
2 were asked to look into any discipline against
3 Sergeant Vanin?

4 A I think there was some follow-up information
12:03 5 received from the RCMP regarding some follow-up
6 correspondence they had or contact they had with
7 Sergeant Vanin, or Staff Sergeant Vanin, and
8 subsequently -- I know there was discussions
9 within my office and the chief or the deputy chief
12:04 10 regarding what action, if any, should be taken
11 against Staff Sergeant Vanin, and I cannot recall,
12 I don't believe there was an internal -- any
13 internal charges laid against him, and we
14 likely -- if memory serves me correctly, we likely
12:04 15 received some legal counsel on that whole matter,
16 but I think that's -- my recollection is that it
17 never proceeded any further after that.

18 Q Do you recall being advised by Inspector Sawatzky
19 that, during the course of their meeting with
12:04 20 Sergeant Vanin, he wouldn't confirm or deny
21 whether he was the source of information to Joyce
22 Milgaard or Centurion Ministries?

23 A That's -- was my recollection.

24 Q I just have one more document to put to you, this
12:05 25 is 048086. If we go to, that's the first page, I



1 believe this would be March the 10th of 1993, but
2 I'm sure I will be corrected if I'm wrong. This
3 document seems to suggest that the RCMP met with
4 you and, in fact, interviewed you about the
12:05 5 involvement you had in searching for Saskatoon
6 police records concerning Larry Fisher, (V1)-,
7 (V2)-----, (V3)----- and (V5)---. I'm wondering,
8 I don't intend to go through this in any detail,
9 I'm wondering if you could review that document
12:05 10 and just let me know whether you believe it to be
11 accurate?

12 A I recall -- I recall meeting with one of the
13 officers that was assigned to that particular
14 investigation. I cannot recall who it was at this
12:06 15 time. There obviously is notes, so I'm not going
16 to -- I can't question it. Second paragraph says:

17 "Unable to offer any assistance in the
18 area of issue number 1",

19 I don't know what issue number 1 is, so -- and I
12:06 20 guess he is right that I was an inspector in the
21 internal affairs investigations section.

22 Q All right. Maybe I'll just direct your attention
23 quickly to page 3 -- 3, page 3 and page 2,
24 starting at page 3. It's recorded:

12:07 25 "It is difficult to say how



1 the noted files went missing and when,
2 given that we know that one and a
3 partial file ((V5)---, (V1)-) made it to
4 microfilm. That putting files on
12:07 5 microfilm ended in 1980 or 1981. There
6 is a suggestion that the (V4)---
7 incident never became a file in itself,
8 that the details went on the murder
9 file. Info to date could suggest that
12:07 10 the (V3)----- and (V2)----- files were
11 not available for microfilm entry.
12 Hence the question: What happened to
13 them prior to 1980 or 1981. Complete
14 file or not, if they were not
12:08 15 missing/lost, they should have made it
16 to microfilm and no later than 1980 or
17 1981."

18 And I take it those are thoughts that you are
19 providing during the interview?

12:08 20 A Umm, I don't think so.

21 Q You don't think so?

22 A I think that's the investigator's thoughts.

23 Q A summary of the conversation with you, perhaps?

24 A No, I --

12:08 25 Q No?



1 A I think if -- can we go back to that, could we go
2 back to the previous page?

3 Q Yes. Page 3?

4 A I think -- I think he's continuing on with his
12:08 5 report. I don't see any reference to myself in
6 there, so I can't say, but to me it appears that
7 he's -- that's his thoughts or his conclusion on
8 that particular report.

9 Q I think I'm cutting into everyone's lunch hour so
12:08 10 perhaps, in fairness to you too, we could break,
11 and you could review the document, and we'll come
12 back --

13 A Okay.

14 Q -- after lunch.

12:09 15 COMMISSIONER MacCALLUM: Okay.

16 (*Adjourned at 12:09 p.m.*)

17 (*Reconvened at 1:30 p.m.*)

18 BY MS. MONAR ENWEANI:

19 Q Good afternoon, Mr. Quinn.

01:30 20 A Afternoon.

21 Q Before we took our break I had asked you to look
22 at an RCMP continuation report, document number
23 048086, starting at page 7, and that appears to
24 record an interview conducted by the RCMP with
01:31 25 yourself on March 10th of 1993. I believe I asked



1 you if the document accurately recorded the
2 information you provided to the RCMP. You've now
3 had a chance to review it. Can you make any
4 comment on this report?

01:31 5 A The first -- I'm recalling how many pages are in
6 that document. The first part of the document is
7 accurate of what I provided him. The part that we
8 were talking about earlier this morning, I've
9 reviewed it again and I'm still, I'm of the
01:31 10 opinion that it's the officer's comments and that
11 would be on the latter part of his report.

12 Q Okay. If I refer you to page 3, if you could look
13 at page 3 and then page 2 and confirm that that's
14 the part of the report you are speaking of?

01:32 15 A Right, and one of the reasons I've come to that
16 conclusion is at the top of that page he's
17 referring to Acting Deputy Chief Corey, so he's
18 onto another subject matter to start with there,
19 and then to me it appears that it's his own
01:32 20 comments in the second part of that page.

21 Q All right, thank you. Those are all of my
22 questions for you, Mr. Quinn. You may be
23 questioned by counsel for some of the other
24 parties.

01:32 25 A Okay, thank you.



1 MR. HARDY: It doesn't look like there are
2 any questions on cross-examination,
3 Mr. Commissioner.

4 COMMISSIONER MacCALLUM: Thank you. Thank
01:33 5 you very much for coming, Mr. Quinn, and
6 testifying.

7 A Thank you.

8 MR. HARDY: And we'll continue with where
9 we left off with the shorter video clips at this
01:33 10 point.

11 COMMISSIONER MacCALLUM: Okay.

12 **(Clip VT28 played)**

13 MS. PAMELA WALLIN: *It's the story of a*
14 *mother's unflagging belief in her child and in*
01:33 15 *his innocence. Joyce Milgaard has spent*
16 *literally years lobbying, petitioning and letter*
17 *writing to have the murder conviction of her son*
18 *David Milgaard re-opened and looked at again by*
19 *the courts. Her perseverance has paid off.*
01:34 20 *Justice Minister Kim Campbell has now referred*
21 *the case to the Supreme Court of Canada for*
22 *review, and joining us this morning from Winnipeg*
23 *to discuss the decision is Joyce Milgaard and her*
24 *son David's lawyer David Asper. Good morning to*
01:34 25 *you both.*



1 MRS. JOYCE MILGAARD: Good morning.

2 MR. DAVID ASPER: Good morning, Pamela.

3 MS. PAMELA WALLIN: Mrs. Milgaard, this has
4 been a long time. I want to say congratulations
01:34 5 to you because you really have fought a campaign
6 for 22 years. What do you think really turned it
7 for you, was it the day you cornered the prime
8 minister and said please look at this and he said
9 he would?

01:34 10 MRS. JOYCE MILGAARD: I really can't tell
11 you the exact corner. That probably was a good
12 part of it. I guess I'm just so happy today and
13 all weekend it's just hard to even think back at
14 the bad times.

01:34 15 MS. PAMELA WALLIN: It's hard to think back
16 that you have spent more than 22 years on this
17 particular campaign?

18 MRS. JOYCE MILGAARD: It's been a long
19 time, but it's here.

01:35 20 MS. PAMELA WALLIN: David Asper, tell us
21 about what is here exactly, what does it mean?
22 The Supreme Court will look at this. What are
23 the options?

24 MR. DAVID ASPER: Well, this is a reference
01:35 25 under section 53 of the Supreme Court Act which



1 you may be more familiar with in terms of
2 constitutional questions. Essentially what the
3 Supreme Court is being asked to do is inquire
4 whether the continued conviction of David
01:35 5 Milgaard presents a miscarriage of justice and
6 then the second part of the reference is that if
7 the court finds that there has been a miscarriage
8 of justice, what remedial advice it would give to
9 the Minister of Justice pursuant to the Criminal
01:35 10 Code.

11 MS. PAMELA WALLIN: So what do you as a
12 lawyer have to do, do you have to prove David is
13 innocent, do you have to prove somebody else is
14 guilty? How does this work?

01:35 15 MR. DAVID ASPER: Well, I'm not exactly
16 sure, and I think that within the next few days
17 Mr. Wolch and I are hoping to get a meeting
18 together with the Department of Justice officials
19 and of course the Supreme Court so that we can
01:35 20 define the parameters. This has never been done
21 before. The comparison is often made to the
22 Truscott case.

23 MS. PAMELA WALLIN: Yeah, the Steven
24 Truscott case.

01:36 25 MR. DAVID ASPER: But it's different



1 because we'll be calling many, many more
2 witnesses and we'll be asking the court to
3 consider a much broader scope of evidence.

4 MS. PAMELA WALLIN: But you have now got
01:36 5 the acknowledgement from the courts and from the
6 justice minister that there is new evidence
7 that's worth taking a look at, you've been making
8 this case for quite a while?

9 MR. DAVID ASPER: Yes. It's very
01:36 10 heartening to know that we've finally apparently
11 crossed some kind of threshold and we're
12 confident now that we'll be in court, that the
13 strength of our argument will prevail.

14 MS. PAMELA WALLIN: Mrs. Milgaard, what's
01:36 15 David feeling today and over the weekend? I
16 mean, in a sense it's a bit of a mixed blessing,
17 the case is re-opened, but there he is, as I
18 think in his own words, still in his cage. Is he
19 feeling kind of torn?

01:36 20 MRS. JOYCE MILGAARD: He's feeling very
21 torn, and we are too. It seems somehow that if
22 you go before a court, you normally have the
23 option of bail, and I guess all along we've
24 thought that we would have too, so I'm just
01:37 25 hoping that they will work something out and



1 maybe they can, people across Canada can write
2 the prime minister and say let him out, he's been
3 there 23 years.

4 Are you aware of what Kujawa is
01:37 5 saying?

6 MS. PAMELA WALLIN: Well, I know there's
7 been some response from the Province of
8 Saskatchewan where of course this case was
9 originally tried and they say they may intervene,
01:37 10 so --

11 MRS. JOYCE MILGAARD: Well, we have a
12 headline here that you should see.

13 MS. PAMELA WALLIN: Okay. David Asper?

14 MR. DAVID ASPER: I'll just hold up the
01:37 15 front page of the Winnipeg Sun.

16 MS. PAMELA WALLIN: That's from -- yeah.

17 MR. DAVID ASPER: That's from yesterday.

18 MS. PAMELA WALLING: Yeah.

19 MR. DAVID ASPER: That's in Winnipeg.
01:37 20 "Milgaard a guilty kook, says MLA," and then a
21 sub-headline, "Former Saskatchewan prosecutor
22 outraged by decision to review case".

23 MS. PAMELA WALLIN: This was the man that
24 prosecuted the case originally?

01:38 25 MR. DAVID ASPER: Well, he prosecuted the



1 *appeal and apparently offered advice to Mr.*
2 *Caldwell during the course of the trial. Now,*
3 *this article that follows the headline gives an*
4 *insight into perhaps the mindset that led*
01:38 5 *ultimately to the conviction of David Milgaard,*
6 *and I'll quote from the article, it says:*

7 *"It doesn't matter if Milgaard is*
8 *innocent of the 1969 murder for which he*
9 *spent 22 years in prison, his case*
01:38 10 *should remain closed," says Serge*
11 *Kujawa, now an NDP MLA. "I'm not*
12 *primarily concerned with his guilt or*
13 *innocence, what I'm concerned with is*
14 *that you, the media, and the lawyers,*
01:38 15 *are selling us down the river."*

16 MS. PAMELA WALLIN: *Okay. Well, let's ask*
17 *about that, David Asper, you know, because*
18 *there's been so many questions about this, about*
19 *why it has taken so long to even look at the*
01:38 20 *case, the question of David's innocence or guilt*
21 *aside, there has been a change of evidence, a*
22 *substantive change in evidence and new evidence,*
23 *why there is such resistance. Is the system just*
24 *not -- is it just not open to review in some way?*

01:38 25 MR. DAVID ASPER: *Well, something of this*



1 magnitude is very, very difficult to comprehend.
2 That's true from the defence perspective, and
3 it's even more true, if you will, from the
4 perspective of the Department of Justice. These
01:39 5 are people who survive daily believing in the
6 system and that the system is generally
7 faultless.

8 MS. PAMELA WALLIN: And if you admit
9 mistake, that somehow the whole system is called
01:39 10 into question, I mean, is that --

11 MR. DAVID ASPER: I think in part that's
12 what we've been confronted with, and of course
13 we've always taken the view that the admission of
14 a mistake proves the strength of the system.

01:39 15 MS. PAMELA WALLIN: Now, there is new
16 evidence and you will be allowed to put that
17 forward. What are your key points, what --

18 MR. DAVID ASPER: Do you have an hour?

19 MS. PAMELA WALLIN: Well, I think that some
01:39 20 of the original witnesses have recanted their
21 testimony I suppose is one.

22 MR. DAVID ASPER: Let me put it this way.
23 The Crown at the trial had three levels of
24 evidence. One involved David's companions,
01:39 25 another involved forensic evidence, and the final



1 aspect involved what the Crown said was a
2 reenactment or admission by Milgaard of the
3 crime.

4 MS. PAMELA WALLIN: Uh-huh.

01:40 5 MR. DAVID ASPER: We have, I think, dealt
6 completely with the companion evidence by virtue
7 of the recantation of Ronald Dale Wilson.

8 MS. PAMELA WALLIN: Right.

9 MR. DAVID ASPER: He admits now that he
01:40 10 lied at the trial. The forensic evidence has
11 been thoroughly discredited and in its most
12 favourable light exonerates David Milgaard,
13 excludes him as the perpetrator.

14 MS. PAMELA WALLIN: Because there are some
01:40 15 new tests that exist today that didn't exist at
16 the time?

17 MR. DAVID ASPER: Essentially that's true.
18 And in terms of the admission or the reenactment,
19 we have located a witness who has provided sworn
01:40 20 evidence that David Milgaard did nothing of the
21 sort. On top of all of that, we now have
22 developed evidence relating to a serial rapist
23 operating in Saskatoon which evidence, in my
24 submission, if put before the jury, would lead
01:40 25 them to, at the very least, have a reasonable



1 doubt as to whether David Milgaard was the
2 perpetrator.

3 MS. PAMELA WALLIN: Mrs. Milgaard, David
4 has never ever admitted his guilt has he?

01:40 5 MRS. JOYCE MILGAARD: That's right, he's
6 always maintained his innocence, and we've always
7 believed him.

8 MS. PAMELA WALLIN: I guess you have.
9 Thank you both very much for talking to us today.
01:41 10 It's a fascinating story. We'll be watching this
11 one very closely.

12 MR. DAVID ASPER: Thank you, Pamela.

13 MRS. JOYCE MILGAARD: Thanks.

14 MS. PAMELA WALLIN: David Asper and Joyce
01:41 15 Milgaard, the mother of David Milgaard.

16 **(Clip VT28 ends)**

17 **(Clip VT29 played)**

18 REPORTER: We're standing by waiting for a
19 news conference which is scheduled to take place
01:41 20 very shortly from the Stony -- rather, the Rocky
21 -- Rockwood minimum security prison north of
22 Winnipeg. You see some live pictures from there
23 now. In the centre there, that is David
24 Milgaard. To his left is his mother Joyce
25 Milgaard.



1 You may recall just a short
2 while ago this morning the Federal Justice
3 Minister Kim Campbell has said that she will ask
4 the Supreme Court of Canada to hold a review into
01:42 5 the 1969 conviction of David Milgaard for murder.

6 We're going to join that news
7 conference live now.

8 MRS. JOYCE MILGAARD: The first thing that
9 I want to do is thank God for the decision today
01:42 10 and I'm just so happy and so grateful and I know
11 Hersh is wanting to make a statement and David
12 Asper is, I know you are going to want to talk to
13 everybody, but it's joy to the world today for
14 me, and we have a few reservations we'll talk
01:42 15 about, but boy, are we happy, and next we --

16 MR. DAVID MILGAARD: (Inaudible).

17 MRS. JOYCE MILGAARD: No, no, we did agree
18 that Hersh was going to say something.

19 MR. DAVID MILGAARD: Before I say
01:42 20 something?

21 MR. HERSH WOLCH: David can say something
22 first.

23 MS. JOYCE MILGAARD: David, go ahead.

24 MR. DAVID MILGAARD: I think I will. I
01:42 25 think I will.



1 MRS. JOYCE MILGAARD: We'll let you speak.

2 MR. DAVID MILGAARD: We're all kind of

3 excited as you can see and the decision we're

4 happy with, right, it seems that it's flawed in

01:42 5 the sense that I'm not getting out today, and in

6 actuality when the government makes a decision to

7 tell the court to take a serious look at a

8 matter, it does so with reason, and I think it's

9 rather ironic that they forgot the component part

01:43 10 of it, to give me an opportunity to be out today

11 which any other person would have in that

12 situation; in other words, I should be able to be

13 out on bail, and while the decision is good, they

14 haven't made that possible. As a matter of fact,

01:43 15 at this point in time that's probably the biggest

16 issue we're trying to deal with and it doesn't

17 make much sense.

18 MAUREEN (MILGAARD): We just want him home.

19 MRS. JOYCE MILGAARD: We sure do.

01:43 20 MAUREEN (MILGAARD): It's been a long road

21 and now we want him home.

22 MR. DAVID MILGAARD: We will make it.

23 MRS. JOYCE MILGAARD: In spite of all of

24 it. And, Hersh, you would like to say something,

01:43 25 and then we can take some questions.



1 MR. HERSH WOLCH: Well, firstly, I suppose
2 we should be thanking Rockwood for their
3 co-operation, I think it's pretty important that
4 they were so sensitive to the situation today and
01:43 5 understanding of -- for the emotion today.

6 As far as the decision is
7 concerned, we're anxious to get into court and
8 establish David's innocence.

9 MR. DAVID MILGAARD: We'll probably be --
10 sorry.

11 MR. HERSH WOLCH: Go ahead.

12 MR. DAVID MILGAARD: We'll probably be
13 looking for some avenue until the flaw that we
14 see there is resolved, I get some continued
01:44 15 co-operation there, and they have, they have been
16 very reasonable, that's true, I agree.

17 MR. HERSH WOLCH: The question -- you've
18 got to understand that as lawyers we look at it
19 somewhat differently than David and his family,
01:44 20 you know, we've gone through a legal system that
21 for us has been very good and we have a lot of
22 faith and confidence in. It's pretty difficult
23 for David and his family to have one experience
24 that has been so awful, so we, you know -- so
01:44 25 normally lawyers speak for clients and echo their



1 words, but we can never appreciate what they've
2 gone through and we do have different
3 perspectives, but the one thing we share in
4 common is that we're very confident in the result
01:45 5 that will emanate from the Supreme Court in the
6 end result.

7 On the issue that Dave
8 addresses, the one of release, we will certainly
9 look into that. With co-operation, we're very
01:45 10 hopeful that David will be able to watch whatever
11 transpires as a -- in the papers.

12 That's really all I want to say
13 and I would rather have you simply let David and
14 his family have the moment and answer whatever
01:45 15 you might want.

16 MRS. JOYCE MILGAARD: And David and his
17 family, that includes --

18 MR. DAVID MILGAARD: Chris.

19 MRS. JOYCE MILGAARD: -- David Asper and --

01:45 20 MR. DAVID MILGAARD: And Chris, my
21 brother-in-law -- my brother and his wife, Pat,
22 and there's a lady, there's an unsung hero in
23 this and she's given me this shirt, and she's
24 probably watching this, or will be watching this,
01:45 25 and her name is Barb. And we thank all the



1 people, that's the most important think, the
2 people that just wrote letters and wrote me
3 letters and who have been fighting to get me out,
4 we thank all of those people from the bottom of
01:46 5 our hearts, because they have been the people
6 that applied the pressure to get the distance
7 that we've got to this point today. They may
8 still have to continue to do so to get me out.

9 MRS. JOYCE MILGAARD: Yeah, get out there
01:46 10 and write letters and tell them that he should be
11 home with his family.

12 SUSAN (MILGAARD): Christmas will be here
13 soon. We've got to get it done before Christmas.
14 We want to actually have Christmas on December
01:46 15 25th, we don't want it on the 26th or 27th when
16 it's convenient, we want it on the 25th, home and
17 free.

18 MAUREEN (MILGAARD): It will be the first
19 December 25th in almost 23 years if he gets home
01:46 20 on that day. Well, before that hopefully.

21 MR. DAVID ASPER: I guess I just wanted to
22 say one thing. Along with Joyce and David, I've
23 sort of been at the centre of the recent storm
24 that we've been encountering on the way to today.

01:47 25 MR. DAVID MILGAARD: And the hero.



1 MR. DAVID ASPER: And a lot of things have
2 been said along the way about the people who have
3 been involved, and I wanted to say that I think
4 the Minister of Justice showed a great deal of
01:47 5 courage today in light of a decision that was
6 made in February of 1991, I think the decision
7 today, and I honestly believe, proves the
8 existence of justice in the country.

9 On behalf of Joyce and the
01:47 10 other members of the family, I think it's
11 important to acknowledge an incredible gesture
12 made by the prime minister about a month ago.

13 MRS. JOYCE MILGAARD: Yes.

14 MR. DAVID ASPER: It was a tangible ray of
01:47 15 hope, something that the Milgaard family hasn't
16 had a great deal of over the past 22 years or so,
17 and I think that the prime minister deserves full
18 credit for his, having his conversation with Mrs.
19 Milgaard.

01:48 20 All along -- Hersh and I made a
21 deal about four years ago that my job was to try
22 to get the case re-opened and if that ever
23 occurred, it would best serve the Milgaard family
24 that someone with 25 years or so experience, not
01:48 25 to dig Hersh, ought to deal with the matters, and



1 in that I think that David will be well served
2 and we are very much looking forward to going to
3 court. We feel very strong in our case. We feel
4 no less so today that David Milgaard is innocent,
01:48 5 we're going to establish that, and this is a
6 really super day.

7 And I also want to thank the
8 many members of the media who have helped us,
9 both in an investigative way and in a broader
01:49 10 way, including moral support. I also want to
11 thank the many, many, many hundreds of Canadians
12 from across the country who have communicated
13 with me and with the Milgaard family, with --

14 MR. DAVID MILGAARD: The John Howard
01:49 15 Society.

16 MR. DAVID ASPER: -- all of us, their
17 support has been unwavering and it has helped me,
18 I know, through some very difficult times.

19 MRS. JOYCE MILGAARD: All of us.

01:49 20 MR. DAVID ASPER: And I hope that some of
21 those people may see this and accept our
22 expression of gratitude at this very, very happy
23 time.

24 MRS. JOYCE MILGAARD: There's one person we
01:49 25 can't forget, and I know Susan wants to say



1 something, but I've got to mention Centurion
2 Ministries. We talked to Paul --

3 MR. DAVID MILGAARD: I spoke to Paul
4 Henderson this morning and Mr. McCloskey, both
01:50 5 those gentlemen put their heart into what they
6 believe in and it's paid off.

7 I think that what should be
8 nice right now, and this will be a bit of a
9 surprise, that maybe both my sisters would like
01:50 10 to say something.

11 MRS. JOYCE MILGAARD: Susan?

12 SUSAN (MILGAARD): I guess the only thing
13 that I feel that's being left out here is you
14 can't even begin to put into words what David and
01:50 15 Hersh have done for us, the hours that they've
16 spent, the beliefs that they've had for us, and
17 David, when we're talking about family, I'm
18 sorry, but you are that close and we have been
19 that close all these years that you are exactly
01:50 20 family, and God bless you both for everything
21 that you've done and for your belief in David.
22 Thank you.

23 MR. LORNE MILGAARD: Yes, I would just like
24 to reiterate that. I've been saving it.

25 **(Clip VT29 ends)**



1 *(Clip VT30 played)*

2 *REPORTER: The Saskatoon Police Department*
3 *came in for heavy criticism today at the Supreme*
4 *Court review of the David Milgaard case.*
5 *Milgaard has spent 22 years in prison for the*
6 *murder of a Saskatoon nursing assistant in 1969.*
7 *Today his lawyers introduced evidence to show the*
8 *police may have manipulated some of the proof*
9 *they needed to show Milgaard was guilty. We get*
10 *more on today's review from Kathy Lyons (ph).*

11 *REPORTER: David Milgaard returned to the*
12 *high court as it continued its effort to answer*
13 *the question was his conviction for murder a*
14 *miscarriage of justice. The 39 year old's*
15 *lawyers had some new surprises, evidence they*
16 *claimed showed police went to great lengths to*
17 *pin the murder on Milgaard.*

18 *Lawyer Hersh Wolch produced a*
19 *police report written before the young Nichol*
20 *John and Ron Wilson changed their stories to*
21 *implicate Milgaard. Wolch pointed out the police*
22 *had a theory which no witness had put forward*
23 *that, "Milgaard would leave car to get purse.*
24 *Having seen Miller closer his sex drive takes*
25 *over and he forces her down alley."*



1 Milgaard's counsel says John
2 and Wilson later produced stories close to the
3 police theory.

4 MR. DAVID ASPER: The police had two
01:52 5 points, they had (a), which was the death of Gail
6 Miller, and they had (b), which was their theory
7 of how it happened and what they needed to do was
8 connect the dots.

9 REPORTER: Milgaard's mother believes this
01:52 10 is crucial.

11 MRS. JOYCE MILGAARD: It was like a light
12 was turned on and I just felt that I've known all
13 along that the police, you know, the police put
14 words in their mouth, but I didn't realize to --

15 **(Clip VT30 ends)**

16 **(Clip VT31 played)**

17 REPORTER: ...now a Saskatchewan appeal
18 court judge. He testified that he didn't put
19 Milgaard on the stand originally because Milgaard
01:53 20 privately told him that he had a knife, that the
21 car got stuck and that he left it for a while,
22 three things that David Milgaard publicly claims
23 never happened. Hersh Wolch is Milgaard's
24 lawyer.

01:53 25 Mr. Wolch, how damaging do you



1 think today's testimony was.

2 MR. HERSH WOLCH: Well, I think on balance,
3 we had positive and negative evidence from
4 David's point of view. There was some very
01:53 5 positive evidence that came out today in terms of
6 the jail guard confession that obviously is
7 difficult to accept now with the contradictory
8 evidence, we have a close friend of Ron Wilson
9 that now, telling us now that he admitted he lied
01:54 10 when he implicated David and she thought he was
11 sincere, and we have Justice Tallis confirming
12 that David always maintained his innocence and
13 also he recommended that David not testify.

14 REPORTER: You also have --

01:54 15 MR. HERSH WOLCH: All those are -- those
16 are all positives. On the negative side, Justice
17 Tallis does not agree with David on a number of
18 side issues that may or may not be important.

19 REPORTER: Well, is the fact that he got
01:54 20 stuck and left the car, is that a side issue? I
21 mean, that gives him his window of opportunity
22 for a murder, so why would that be a side issue?

23 MR. HERSH WOLCH: Well, I'm not sure that
24 that's a window of opportunity. I mean, where
01:54 25 were they stuck? If you look at David's notes



1 that were filed in court some time ago, they were
2 stuck on some ice in a location that is nowhere
3 near where Gail Miller was killed. I mean, a
4 window of opportunity is a far cry from saying
01:55 5 somebody did something.

6 REPORTER: You had David Milgaard just a
7 couple of weeks ago saying that he didn't get
8 stuck and he didn't get out of the car and now
9 Justice Tallis is saying that David told him 23
01:55 10 years ago that he did get stuck and he did leave
11 the car.

12 MR. HERSH WOLCH: Well, there's no
13 question, but the car got stuck many times, that
14 wasn't denied. I think you've got to juxtapose
01:55 15 which time are we talking about. What David
16 Milgaard says is in this area where Wilson once
17 said and Nichol John perhaps said that something
18 happened, he was never stuck, never got out of
19 the car, and our position hasn't changed, that
01:55 20 that particular incident didn't happen.

21 David, at the very beginning,
22 the first time the police talked to him, talked
23 about asking an older woman for directions, but
24 you can't transpose one and the other and then
01:55 25 try to make something out of nothing.



1 REPORTER: So you think that Justice Tallis
2 and David Milgaard agree?

3 MR. HERSH WOLCH: No, it's not a matter of
4 agreeing, but you are taking the 23 year
01:56 5 recollection of two people in Justice Tallis'
6 regard with no notes and whatever else. I mean,
7 if you expect them to agree on every issue, then
8 there would be something wrong, I don't know how
9 you can agree on every issue, but on the
01:56 10 essential issues I believe they agree.

11 REPORTER: But Justice Tallis appears to
12 feel that this is an essential issue and that he
13 has no doubt in his mind that David Milgaard told
14 him that they did get stuck and he did leave the
01:56 15 car.

16 MR. HERSH WOLCH: Well, but where? That's
17 the question. Where? I mean, Justice Tallis
18 also never testified to the entire incident where
19 the Danchuk car was stuck and David and Wilson
01:56 20 pushed, that was totally left out.

21 REPORTER: So David --

22 MR. HERSH WOLCH: So --

23 REPORTER: -- Milgaard isn't sorry then
24 that he waived his client privilege here and
01:56 25 allowed --



1 MR. HERSH WOLCH: David Milgaard's attitude
2 has been you can look at anything, take my blood,
3 take any sample you want, put me on a polygraph,
4 put me on truth serum, talk to my lawyer, do
01:57 5 whatever you want, the truth will come out. I
6 would simply ask you to compare it to Larry
7 Fisher's attitude.

8 REPORTER: Did you feel at all restrained
9 in your cross-examination of Justice Tallis today
01:57 10 because he was a judge testifying before judges?

11 MR. HERSH WOLCH: Not particularly. I knew
12 generally what was going to be said before it was
13 said and yet, you know, our position is, you
14 know, we're totally open.

01:57 15 REPORTER: All right. Thanks very much,
16 Mr. Wolch.

17 MR. HERSH WOLCH: You're welcome.

18 **(Clip VT31 ends)**

19 **(Clip VT32 played)**

01:58 20 REPORTER: Today the court heard the final
21 arguments from lawyers on all sides of the case.
22 Hersh Wolch is representing David Milgaard.

23 INTERVIEWER: Mr. Wolch, experts say that
24 some of the testimony by David Milgaard's
01:58 25 original defence lawyer, things like that he had



1 a knife when he arrived in Saskatoon, that he
2 left the car in the morning giving him an
3 opportunity to perhaps murder Gail Miller, and
4 that later he threw a compact case out of the car
01:58 5 window, a case that possibly could have been in
6 Gail Miller's purse. How did you counter those
7 kind of arguments?

8 MR. HERSH WOLCH: Well, we dealt with them
9 rather extensively today and basically you've got
01:58 10 to recall that it's a 23 year memory without
11 notes and from a judge who's had countless very,
12 very serious cases in the meantime, David's only
13 had one case, and I think we were able to show
14 that David might be right on many of these issues
01:58 15 because on a number of them the questions asked
16 of witnesses by Justice Tallis then are somewhat
17 inconsistent with David having told him things
18 like a compact or a knife, and there are -- just
19 through that way I think we were able to show
01:59 20 that David could be right.

21 INTERVIEWER: But now that this former
22 defence lawyer is now a justice, isn't it a
23 little risky for you to perhaps suggest that the
24 testimony of an appeal court judge may be
01:59 25 somewhat faulty or questionable?



1 MR. HERSH WOLCH: Well, I think Justice
2 Tallis would be the first person to agree that
3 he's only human and -- no one is saying that he's
4 making anything up or his credibility is lacking,
01:59 5 the question is, you know, what do you recall.
6 You know, if somebody faulted my memory for what
7 happened in 1969 or '70, I wouldn't be too upset.

8 INTERVIEWER: The question that you built
9 your case on largely, that perhaps David
01:59 10 Milgaard -- well, you are saying definitely David
11 Milgaard did not commit the murder, but Larry
12 Fisher did. Is it damaging for your case that
13 the Supreme Court is saying that Larry Fisher's
14 testimony will not be used in the final
01:59 15 determination? Is that a problem for you?

16 MR. HERSH WOLCH: No, that's not the way I
17 read it, the way I read it is that their mandate
18 is not to judge Larry Fisher, and if they were to
19 say Larry Fisher was guilty, that would be
02:00 20 totally unfair, he's never had a trial.

21 Secondly, if they were to say
22 that, he could never have a trial, because how
23 could he ever get a fair trial if the highest
24 court in the land has already determined that you
02:00 25 are guilty, so they simply can't do it.



1 REPORTER: How do you interpret that, then?

2 MR. HERSH WOLCH: I -- they are simply
3 stating the law as it is. There have been
4 previous inquiries, the (inaudible) inquiry and
02:01 5 the -- another inquiry in Ontario as well on
6 political donations, where the Court has ruled
7 they cannot make those kind of findings in this
8 kind of atmosphere. They can, though, use the
9 evidence.

02:01 10 REPORTER: Very briefly, then, what's left
11 for the Court? What are the Court's five options
12 that they have to decide on?

13 MR. HERSH WOLCH: Well there are three
14 options that say 'there was a miscarriage of
02:01 15 Justice and we'll set David free with a
16 miscarriage'; there is one option that says
17 'there is no miscarriage but let him out on
18 compassionate grounds'; and the final option is
19 that 'there is no miscarriage and he shouldn't
02:01 20 get out'.

21 REPORTER: But if there is no pardon, what
22 would you be doing next, is that as far as you
23 can go?

24 MR. HERSH WOLCH: Well somebody suggested
02:02 25 the World Court in the Hague or something, but I



1 don't think that's realistic. This is as far as
2 we can go unless there's some new breakthrough or
3 something.

02:02 4 REPORTER: And if there is a pardon, what
5 can you do as far as compensation, or what will
6 you be doing, do you think?

7 MR. HERSH WOLCH: Well, that's down the
8 road, it will depend what the Court says, but
9 certainly there should be compensation if an
02:02 10 innocent man had been jailed for 23 years.

11 REPORTER: Where is Mr. Milgaard now,
12 what's he going to be doing in the meantime?
13 When will there be a decision, I guess, first of
14 all?

02:02 15 MR. HERSH WOLCH: Well, hopefully before
16 the NHL players come back, but I don't know. The
17 Court makes -- you know, it -- they have acted
18 very, very quickly so far, they have a lot to
19 look at, however, so, you know, a month, two
02:02 20 months, I really don't know. They gave no
21 indication as to when, but they are very
22 conscientious.

23 REPORTER: Okay. Thanks very much for
24 talking with us.

02:02 25 **(Clip VT32 ends)**



1 *(Clip VT33 played)*

2 MR. HERSH WOLCH: ... very understanding
3 manner. You can imagine the pressure that's been
4 building over the last number of years and the
02:03 5 last few days in particular.

6 Perhaps just some general
7 comments and then you can ask whatever questions,
8 and you can hear from the people you really want
9 to hear from, I'm sure it doesn't include me.

02:03 10 We are very pleased with the
11 decision. We are particularly pleased by the
12 example the Court set in rendering speedy justice
13 and we are hoping that will continue.

14 As we understand it -- and we
02:03 15 have not read the decision, although we have had
16 it read to us -- the Court has found there was a,
17 or is a miscarriage of justice, and the continued
18 conviction constitutes a miscarriage of justice,
19 and that a new trial should be ordered. We would
02:04 20 anxiously await the new trial. We have complete
21 confidence as to what the outcome would be, and
22 we would -- we're ready to go to trial tomorrow
23 in this particular matter. We, over the last few
24 months, finally found out what the case is about,
02:04 25 and we have no fear at all to go to trial.



1 We will find out, hopefully
2 shortly, what Saskatchewan's position is in terms
3 of going ahead, but we are not asking that it be
4 not proceeded with on any sort of compassionate
02:04 5 ground or anything like that. We believe
6 whatever little evidence there is is still
7 available, and we're more than willing to meet
8 it, so that we feel that there has been a fair
9 bit of time to contemplate the ramifications of
02:05 10 this decision, and we're looking forward to a
11 speedy answer and a speedy release of David.

12 Those are all the remarks I
13 have, and I think you want to hear from the more
14 important people.

02:05 15 MS. SUSAN MILGAARD: Hooray.

16 MR. LORNE MILGAARD: Hip hip hooray.

17 MR. DAVID MILGAARD: I would like to say
18 that, for me, I'm glad this part of it is all
19 finished with and that when I go to Saskatchewan
02:05 20 that, you know, it happens as quickly as possible
21 and this is all over for all of us. It's -- it
22 seems we've got one step, and one step, and one
23 step, and one step, and it seems too damn long
24 sometimes. I don't know, that's just how I feel.

02:06 25 MRS. JOYCE MILGAARD: Can I say what I



1 *feel?*

2 MR. DAVID MILGAARD: *Sure.*

3 MRS. JOYCE MILGAARD: *I just feel terrific.*

4 *I'm really so happy. It's a dream come true.*

02:06 5 *I'm sorry it didn't happen two years ago, I think*

6 *that it could have happened then if there had*

7 *been any kind of an investigation with the*

8 *Justice Department, if they had a different kind*

9 *of investigator, instead of Paul Henderson having*

02:06 10 *to go out with me and do the investigating. So*

11 *that I think it late, but boy, we've got it, so*

12 *I'm happy, even though it's late.*

13 REPORTER: *Is this the best it could be?*

14 MRS. JOYCE MILGAARD: *The best would have*

02:06 15 *been an (a), but believe me, anything that says*

16 *there has been a miscarriage of justice, that's*

17 *exactly right with me and with all of us.*

18 MR. DAVID MILGAARD: *I'm not so sure about,*

19 *like Hersh was talking about compassionate*

02:06 20 *grounds or something and Saskatchewan saying, you*

21 *know, like they are doing us a favour or*

22 *something like that. The fact, though, that the*

23 *Supreme Court has what was weighed, and they*

24 *established what they felt was, you know, enough*

02:07 25 *information to say there is a miscarriage of*



1 justice, there isn't a sense of any
2 disillusionment on my part that, you know, at
3 least the answer has come out, you know, there's
4 been a miscarriage of justice, and that's it.

02:07 5 We're not looking at

6 Saskatchewan like a compassionate grounds saying
7 we are getting an opportunity for a new trial. I
8 find it rather ironic that, even if that trial
9 fails, I end up with a pardon of some sort. I
02:07 10 think what should happen myself, if there is a
11 change or some sense of direction in some of the
12 different things that have taken place throughout
13 all of this for the whole family, is that the
14 people that made all the mistakes somehow be
02:07 15 found, and found accountable for them, so that it
16 doesn't happen to other people. Other people
17 might be your son, might be your daughter.
18 That's how I feel.

19 REPORTER: David, do you think the fact
02:08 20 that you finally had a chance to, or you finally
21 did, in fact, tell them your story yourself in a
22 Court, do you think that that had something to do
23 with what they found?

24 MR. DAVID MILGAARD: In my time to talk in
02:08 25 the Supreme Court, the biggest feelings I had up



1 *inside of me was the sense when someone would be*
2 *poking at me with questions, suggesting to me in*
3 *a way that I was guilty of things, and knowing*
4 *that I wasn't, it kind of twisted me around. And*
02:08 5 *even, they wouldn't listen to my answers, they*
6 *would keep on doing it. That made me feel really*
7 *lousy.*

8 *REPORTER: But do you think the fact that*
9 *you got your message, you finally had a chance*
02:08 10 *to --*

11 *MR. DAVID MILGAARD: I sure hope so. I*
12 *sure hope so.*

13 *REPORTER: But do you think that THAT had*
14 *an impact on the judges, in other words did you*
02:08 15 *get through to them, is that part of what they*
16 *came up with today?*

17 *MR. DAVID MILGAARD: I sure hope so.*

18 *MRS. JOYCE MILGAARD: I hope so.*

19 *REPORTER: Are you, in fact, saying that*
02:08 20 *you want a new trial to go ahead, because it*
21 *seems as if the option is now up to Saskatchewan*
22 *to decide whether or not to proceed with the*
23 *charges, presuming of course that the Federal*
24 *Government goes along with this, but are you*
02:09 25 *saying that, given a choice between a stay of*



1 *proceedings and a new trial, you want a new*
2 *trial?*

3 MR. HERSH WOLCH: *No. What I am saying is*
4 *this. Given the equal choice, we would prefer a*
02:09 5 *stay of proceedings, provided that the stay is*
6 *given without reservation.*

7 *We don't want a stay of*
8 *proceedings being explained as "we're doing you a*
9 *favour, we're giving you a break, we really think*
02:09 10 *you're guilty but, what the heck, you've done*
11 *enough time". We don't want an equivocal stay.*
12 *If you're going to stay it, stay it, is our*
13 *attitude; if you're going to go ahead, go ahead,*
14 *but don't sort of mollify it.*

02:09 15 MRS. JOYCE MILGAARD: *But we talked to the*
16 *Supreme Court, we took our evidence to the*
17 *Supreme Court, we're prepared to take that same*
18 *evidence to Saskatchewan and beat them hands*
19 *down.*

02:09 20 REPORTER: *But there's nothing preventing*
21 *the Government of Saskatchewan and the Attorney*
22 *General from saying exactly what you've just*
23 *worried about, and that is "okay we're going to*
24 *give him a stay because he's been in jail long*
02:10 25 *enough, not because we don't think that, you*



1 know, we could convict him".

2 MR. HERSH WOLCH: Maybe we'll sue them
3 civilly if they say it.

4 MRS. JOYCE MILGAARD: Great idea.

02:10 5 MR. DAVID MILGAARD: I have two of the
6 greatest sisters in the world here with me, and
7 somebody might say what sort of thing it's been
8 for all of us in a circle of kind of growing up
9 in strength inside this picture, because we have,
02:10 10 it's taken so long, right. But my mum is often,
11 you know, running away and doing things and all
12 the rest of it, they are the ones that kind of
13 sit back with me when I need somebody, and I just
14 thought I want to say that too.

02:10 15 Maybe the last thing I want to
16 say for right now is that there are people
17 that -- you know, all the way across the country
18 that have been a part of a blessing for all of
19 us, they have been supporters in every city,
02:10 20 there is always something someplace with Milgaard
21 buttons and shirts, and a lot of the times I've
22 never met any of those people and I may never
23 meet any of those people, and they basically have
24 been kind of the backbone of this thing and have
02:11 25 kept it going, and I want to take the time to



1 thank all of them, too, for what's -- for what
2 it's worth.

3 REPORTER: The fact that the Supreme Court
4 is asking -- throwing the ball into the
02:11 5 Saskatchewan court, but at the same time saying
6 there is a miscarriage of justice, how would you
7 interpret that; "yes, there is a miscarriage of
8 justice but we're not 100 percent sure?"

9 MR. HERSH WOLCH: No. What they are saying
02:11 10 I think is, and I don't want to be presumptuous,
11 is that they are really not the forum to try
12 trials, and there was a lot of credible evidence
13 pointing to David's innocence brought forward
14 before them, you know, pointing a finger at
02:11 15 somebody else, rightly, whatever. I'm sure it
16 was determined to be credible evidence. They are
17 not saying that it has to be accepted, but a jury
18 could easily look at that evidence, couple that
19 with the weakness of the rest of the case and say
02:11 20 "not guilty", I mean it's -- in fact I would be
21 shocked if it didn't happen. So that they are
22 simply taking one of the options and following
23 it.

24 REPORTER: Do you feel this, their ruling,
02:12 25 weakens a future claim for compensation?



1 MR. HERSH WOLCH: Well, I haven't really
2 analysed compensation, but I would think that if,
3 at the end of the day, a man has spent 23 years
4 in jail and has never been convicted of a crime,
02:12 5 that one could clearly argue that he deserves
6 some sort of compensation.

7 REPORTER: Would that be the effect of a
8 stay, you said you --

9 MR. HERSH WOLCH: Well, a stay or a not
02:12 10 guilty, I mean what do you do if a person has
11 spent most of his life in jail when he's not
12 guilty?

13 (BREAK IN TAPE)

14 MR. HERSH WOLCH: But the Minister of
02:12 15 Justice, and those involved in the administration
16 of justice, will follow the lead of the Supreme
17 Court, and that is make quick decisions, and the
18 first obvious one is to order a new trial.

19 Saskatchewan should be able to
02:12 20 decide that in a day. If they go ahead with a
21 new trial, then we will go for bail in
22 Saskatchewan, we will apply for bail, and I can't
23 imagine David not being released. If they stay
24 it, then he'll walk out.

02:13 25 REPORTER: But can you do that now?



1 MR. HERSH WOLCH: No, well it hasn't been
2 ordered yet. This is advice to the Minister, she
3 has to follow the advice first, and I assume she
4 will, obviously.

02:13 5 REPORTER: You are saying that David could
6 be free within hours?

7 MR. HERSH WOLCH: He could technically be
8 it people moved with the same speed as the
9 Supreme Court moved.

02:13 10 REPORTER: David, how do you react to the
11 Supreme Court's ruling that you did, in fact,
12 have a fair trial in 1969?

13 MR. DAVID MILGAARD: Pardon me?

14 REPORTER: The Supreme Court says that you
02:13 15 did have a fair trial in 1969, they seem to be
16 saying it's only with the emergence of new
17 evidence that a miscarriage has become evident,
18 but in 1969 they said it was a fair trial?

19 ONE OF DAVID'S SISTERS: Because the jury
02:13 20 had not been given everything, that's the way it
21 was worded, so --

22 MR. DAVID MILGAARD: I wasn't quite sure
23 that I understood what you were saying.

24 MR. HERSH WOLCH: Well, no, I know what
25 you're saying.



1 MR. DAVID MILGAARD: I guess there is no
2 way for me to grab that, Hersh, that if you have
3 a benefit of the doubt situation, you know, like
4 there was supposed to be a trial, I mean you take
02:14 5 it all the way up to the ladder to the Supreme
6 Court, you know, the different levels, if you
7 really take a look at it in the eye of a person
8 who's studying law, this isn't necessarily a
9 generality, a gentleman told me there's less
02:14 10 provisions to protect people from the bottom up.
11 In other words, you have to define what the law
12 is, law by fact, law this way, so it gets less
13 and less, if that makes any sense.

14 REPORTER: Hersh, if I could ask you to
02:14 15 continue on that, please?

16 MR. HERSH WOLCH: Well, you know, the --
17 it's interesting because one of the, or what I
18 thought was a restriction in the hearing, was the
19 overall fairness of the trial. I didn't really
02:14 20 think the Supreme Court was being asked, in
21 particular, to determine the fairness of the
22 trial.

23 I would rather that be
24 addressed perhaps through a commission of
02:15 25 inquiry, or whatever, who would have more time to



1 look into all the areas.

2 Keep in mind that, just for
3 example, two police officers weren't called, one
4 couldn't be found, he was somewhere in the
02:15 5 States, one was in -- wasn't well. I don't think
6 that time enabled us to really go into the, in
7 depth, into the question of fairness of trial or
8 not and, I mean, we concentrated on really trying
9 to show there was a miscarriage and that the door
02:15 10 should be opened, so I would think that there is
11 a lot more to it than just this.

12 REPORTER: You want a commission of
13 inquiry?

14 MR. HERSH WOLCH: We would like a
02:15 15 commission of inquiry to go through the whole
16 matter, and go through it in detail, but I think
17 that that has to wait until we get a decision,
18 obviously, whether David will go to trial or not.
19 But, in the long run, we would like a commission
02:15 20 of inquiry to go through the whole area and
21 determine what, what did go wrong here.

22 REPORTER: What the Court seems to be
23 saying, or the judgement says today, is that had
24 the jury in David's original trial known the
02:16 25 information about Larry Fisher --



1 MRS. JOYCE MILGAARD: That's right.

2 REPORTER: -- that it might have resulted
3 in a different verdict?

4 MR. HERSH WOLCH: Yes.

02:16 5 REPORTER: Now are you saying that a
6 commission of inquiry, actually looking at the
7 fact that police officers knew about Larry
8 Fisher's existence some six or eight months after
9 conviction, they should have perhaps re-opened,
02:16 10 and the Crown should have re-opened at that
11 point?

12 MR. HERSH WOLCH: Well, yes, I think all
13 that should be gone through.

14 You have also got to remember
02:16 15 that the Minister ordered the re-opening at the
16 end of November, we were already in hearing by
17 January, and, quite frankly, much of what we
18 heard, we heard for the first time. It's almost
19 like we've now had a preliminary hearing, we now
02:16 20 know more what it's about, and there are avenues
21 that I would explore in the commission of inquiry
22 that were not really appropriate for the Supreme
23 Court.

24 REPORTER: Do you think all the Supreme
02:17 25 Court is actually saying is that David's



1 continued incarceration would represent a
2 miscarriage of justice? I don't know if that's
3 what you interpret it, but if that is the case,
4 how would you interpret that as a victory?

02:17 5 MR. HERSH WOLCH: Well, I disagree with
6 you, I mean they weren't asked about continued
7 incarceration, the question the Minister posed
8 was continued conviction.

9 MR. DAVID MILGAARD: It's not really part
02:17 10 of a victory if we're sitting here looking at a
11 commission of inquiry and saying "now where
12 should we poke holes at it". You know, when we
13 look at the Justice Department, the way they've
14 failed us, miserably sometimes, all of these
02:17 15 places all have to be looked at. Why shouldn't
16 they. Nothing to fear.

17 MR. HERSH WOLCH: I'd like to address your
18 question, though, I mean if you can quote me the
19 words I'll try and answer it, but --

02:17 20 REPORTER: I can't, somebody just told me.

21 MR. HERSH WOLCH: But I'm just saying that
22 I -- the -- in the middle of the hearing there
23 were options put forward, (a), (b), (c), (d), and
24 (e), and the one that appears to be the right one
02:17 25 that was picked was option (c), and option (c)



1 is -- paraphrase it -- there is credible evidence
2 which makes it appear that the continued
3 conviction would constitute a miscarriage of
4 justice.

02:18 5 REPORTER: The Supreme Court is clearly
6 saying that there -- the evidence justified the
7 verdict at the time.

8 MR. HERSH WOLCH: Well, sure.

9 REPORTER: How does Dave wipe that out?
02:18 10 How do you get compensation for 23 years with
11 that, I mean whatever form his compensation would
12 take?

13 MR. HERSH WOLCH: Well, are you saying,
14 though, the outcome is different if he's
02:18 15 acquitted now?

16 REPORTER: Well who do you go after? I'm
17 just -- who do you go after?

18 MR. HERSH WOLCH: Is not --

19 REPORTER: I mean is the Supreme Court not
02:18 20 saying that, back then, nobody made a mistake?

21 MR. HERSH WOLCH: Well, okay, you can show
22 somebody is not guilty without saying there is a
23 mistake, but they -- the bottom line is that we
24 do grant compensation for people who have spent
02:18 25 time in jail and they end up they weren't



1 convicted of anything.

2 REPORTER: But where's the compensation
3 coming from if nobody in Saskatchewan made a
4 mistake?

02:19 5 MRS. JOYCE MILGAARD: They did make a
6 mistake in 1970 when they had Larry Fisher and
7 they didn't let -- go back at that point in time,
8 so if they want to start talking, that's the time
9 when they made their big mistake.

02:19 10 I've never said that I -- you
11 know, from day one, they probably did think that
12 my son was guilty, and they -- and I've never
13 felt badly that that jury did at the time. The
14 jury, at the time, certainly heard evidence that
02:19 15 -- and I've never felt that they did a bad job,
16 that jury, I felt that they did what they heard
17 in front of them.

18 But we know, now, about a lot
19 of disclosure that we didn't have at the time,
02:19 20 and the police did know that, so they took the
21 facts that they didn't give us, and they forced
22 them into a picture that wasn't real, and they
23 convicted my son. In 1970, even if at that point
24 they had thought they had the real person in
02:19 25 David, they knew they didn't when they had Larry



1 Fisher. And I guess that is why our family says,
2 you know, the wrong was done to us from that day
3 forward.

4 REPORTER: You are saying the police knew
02:20 5 that Larry Fisher did it?

6 ONE OF DAVID'S SISTERS: They may not have
7 known, but they should have investigated the
8 possibility.

9 MRS. JOYCE MILGAARD: Definitely, at that
02:20 10 time, and if they had --

11 MR. DAVID MILGAARD: There is two issues
12 that are there, you know, and this is a lot
13 because I'm getting pretty tired myself. One of
14 the issues is compensation itself, right. It's a
15 --

16 (Break in tape)

17 REPORTER: ... ask you how you could be
18 compensated for 23 years?

19 MR. DAVID MILGAARD: I can't.

02:20 20 REPORTER: Despite that, do you have any
21 figure in mind?

22 MR. HERSH WOLCH: No, we've never even
23 discussed that.

24 ONE OF DAVID'S SISTERS: We got here, to
02:20 25 today, we're happy and we are here today. We're



1 not looking at tomorrow, next week, next year.
2 We haven't thought about the compensation, we
3 don't know what's going on, we're just happy
4 today.

02:20 5 MRS. JOYCE MILGAARD: And we want to
6 celebrate today, you guys, and no more negative
7 questions.

8 MR. HERSH WOLCH: It will give --

9 REPORTER: Would you like to be out
02:21 10 tonight?

11 MR. DAVID MILGAARD: Pardon me?

12 REPORTER: Would you like to be out
13 tonight?

14 MR. DAVID MILGAARD: I would love to be
02:21 15 outside, if there is a matter, how do you say
16 that word 'fastness', or something like that, I
17 would like to see it happen, I need it to happen?

18 MRS. JOYCE MILGAARD: And where did David
19 Asper go in all of this?

20 MR. DAVID MILGAARD: I don't know, I'm
21 looking for him.

22 MR. HERSH WOLCH: He's over here.

23 MRS. JOYCE MILGAARD: I haven't heard a
24 word from you, David?

02:21 25 MR. DAVID ASPER: I can't speak.



1 REPORTER: No more negative questions.

2 MR. DAVID MILGAARD: No more questions,
3 maybe no more questions, unless it's important.

4 MR. HERSH WOLCH: If there are any
02:21 5 questions on the more legal aspects of it, you
6 can deal with myself or David perhaps privately,
7 on the more interesting stuff you can deal with
8 either Joyce or David directly.

9 But, you know, just on that one
02:21 10 issue I don't want to leave unsaid, and that is
11 that the question of police wrongdoing, or
12 screwing up the investigation, or whatever, was
13 not our focus in the Supreme Court, because what
14 we had to do was show there was credible evidence
02:22 15 that leads to David's innocence. That's what we
16 did, that's what we established. It would do us
17 no good to have the Court say "the police didn't
18 do things properly, but there is no credible
19 evidence", so that we concentrated on what we had
02:22 20 to do for that forum.

21 If there's an investigation or
22 an inquiry as to conduct, or how these things
23 happened, then we will concentrate on what's
24 important there and won't concentrate on the
02:22 25 credibility of our evidence.



1 REPORTER: Are you concerned, though, that
2 this crime may go unsolved, that there will be
3 always a question in some peoples' minds as to
4 what happened, based on whatever the Saskatchewan
02:22 5 Government decides to do?

6 MR. DAVID MILGAARD: I'm concerned that the
7 crime may be unsolved, you know.

8 REPORTER: And what will that mean to your
9 -- to the rest of your life? Do you think that,
02:22 10 if it does remain unsolved or specific blame
11 isn't placed somewhere, is that going to be
12 something that you are going to have to carry
13 around, that every time somebody meets you and
14 knows about the case they are going to know it's
02:23 15 an unsolved case, there is always a question mark
16 there?

17 MR. DAVID MILGAARD: I don't know, I guess
18 a person could go ahead and have that kind of
19 thing happen all over again, and somebody else
02:23 20 might end up in prison. That's one way to say I
21 just think I wouldn't want to see something like
22 that running around causing that kind of problem,
23 killing women, raping women. You know, a lot of
24 people in prison don't have an idea sometimes, or
02:23 25 people on the street don't have an idea sometimes



1 about people in prison. Guys, men in prison,
2 they don't like to see that happen.

3 REPORTER: Joyce, is it hollow for you if
4 it remains unsolved?

02:23 5 MRS. JOYCE MILGAARD: Uh, it's not hollow
6 because I'm going to have my son home, and that's
7 a major victory.

8 I think that, you know, if
9 there's any doubt in Saskatchewan's mind, then --
02:23 10 and once this conviction is stayed, I mean if
11 they try to be -- try to sort of be compassionate
12 about it, we'll demand a new trial, and then they
13 can go after who the real killer is.

14 REPORTER: Based on what the Supreme Court
02:24 15 said, David, have you got anything to say to Kim
16 Campbell today?

17 MR. DAVID MILGAARD: Hurry up.

18 MRS. JOYCE MILGAARD: Just hurry.

19 REPORTER: What's the last 24 hours been
02:24 20 like for you emotionally, David, just take us
21 through?

22 MR. DAVID MILGAARD: I'm just going to go,
23 okay, I have been doing all right. Okay? I've
24 been doing okay.

02:24 25 MR. HERSH WOLCH: Just one thing, I have



1 the judgement in my hand right now, and the words
2 are:

3 "The continued conviction of Milgaard
4 would amount to a miscarriage of justice
02:24 5 if an opportunity was not provided for a
6 jury to consider the fresh evidence."

7 Those are the actual words. I can read more if
8 you like, but that's the words.

9 REPORTER: Okay. Well how do you interpret
02:24 10 that yourself?

11 MR. HERSH WOLCH: Speaks for itself. Well
12 it goes on to say, I'm not going to read it to
13 you now, but it goes on to say that they
14 recommend to the Minister that she set aside the
02:24 15 conviction, that she set aside the conviction and
16 direct that a new trial be held, conviction set
17 aside. They go on to say --

18 MRS. JOYCE MILGAARD: And that means
19 innocence, right?

02:25 20 MR. HERSH WOLCH: That's what it means in
21 Canada at least. It would be open to the
22 Attorney General of Saskatchewan to enter a stay
23 if that course was deemed appropriate in light of
24 all the circumstances. However, if a stay is not
02:25 25 entered, a new trial proceeds and guilty is



1 returned, we recommend the granting of a
2 conditional pardon.

3 So that, I mean, the words are
4 there but, you know, I think the operative words
02:25 5 that I read here is the recommendation "the
6 conviction be set aside". That was our
7 objective, that's what we're looking for.

8 REPORTER: Well if the Government of
9 Saskatchewan today says "we believe he is still
02:25 10 guilty, but we're going to not proceed with a new
11 trial", you said you're going to be very
12 disappointed with that?

13 **(Clip VT33 ends)**

14 **(Clip VT34 played)**

02:26 15 REPORTER: ... maintained their innocence,
16 and they join us now from the Stony Mountain
17 Penitentiary in Manitoba, just north of Winnipeg.
18 David Milgaard is with his mother, Joyce
19 Milgaard. Hello.

02:26 20 MRS. JOYCE MILGAARD: Hi.

21 REPORTER: Well I guess you've heard the
22 decision, now, from the Supreme Court of Canada,
23 we had a news conference a little while ago, but
24 for people who missed that let me ask you again,
02:26 25 if I can here, your reaction to what the Supreme



1 Court of Canada said, that David should get a new
2 trial. David, what's, what's your reaction to
3 the news?

4 MR. DAVID MILGAARD: What was my reaction
02:26 5 to the news that there is a new trial?

6 REPORTER: Right?

7 MR. DAVID MILGAARD: I'm really happy to
8 have an opportunity to be getting out of this
9 place.

02:26 10 MRS. JOYCE MILGAARD: We're really excited
11 about it, because that choice of a new trial is
12 also a choice that the Supreme Court has made, to
13 say that there was a miscarriage of justice and
14 that there should be a new trial ordered, or they
02:27 15 could quash the conviction, and that whatever
16 way, you know, we've been before the highest
17 Court in the land and David's innocence was
18 established there, of that conviction, and if
19 Saskatchewan wants to try again, well boy, we're
02:27 20 ready for them. This time we have disclosure.

21 MR. DAVID MILGAARD: The situation, how
22 everybody is trying to add it up, the bits and
23 pieces as to, you know, what may happen and what
24 may not happen, sometimes I'm left with
02:27 25 wondering, myself, as to what's taking place.



1 REPORTER: Uh-huh?

2 MR. DAVID MILGAARD: But, through all of
3 it, what I do see is a sense of at least now
4 there's an effort by a lot of people to sort of
02:27 5 get on top of the situation and find out where
6 people are responsible for making mistakes, where
7 they made mistakes in the Justice Department,
8 where they made mistakes in Saskatchewan, where
9 the people that are making mistakes in relation
02:28 10 to just trying to resolve things.

11 Like even sometimes you get in
12 the House of Commons, they get into different
13 avenues of public opinion or things like that,
14 anything that will move a situation or people
02:28 15 around, as we have been moved around from the
16 very beginning by various groups of people and
17 stuff, are becoming under the gun --

18 REPORTER: So, David, --

19 MR. DAVID MILGAARD: -- as to what really
02:28 20 took place.

21 REPORTER: You think, David, that there
22 should be some kind of formal review now, did I
23 think I hear you saying, that those who are
24 responsible for your 23 years behind bars, that
02:28 25 the system that led to that happening should be



1 *looked into, and people should be held*
2 *accountable; is that what you are saying?*

3 *MRS. JOYCE MILGAARD: Definitely.*

4 *MR. DAVID MILGAARD: I'm saying*

02:28 5 *Saskatchewan, the whole Province of Saskatchewan,*
6 *should be gone over with a fine-tooth comb.*

7 *MRS. JOYCE MILGAARD: I agree.*

8 *REPORTER: Do you think, Mrs. Milgaard,*
9 *that there is going to be a new trial, I mean,*
02:28 10 *what's your best knowledge on this?*

11 *MRS. JOYCE MILGAARD: I think it would be*
12 *highly unlikely, however, we are very encouraged*
13 *by what the Supreme Court has said.*

14 *The point is all the witnesses*
02:29 15 *are there that were there before, so they could*
16 *certainly call a new trial, it isn't as if*
17 *anybody is dead. However, if the Supreme Court*
18 *was able to see through that and feel that if a*
19 *jury heard that, the jury would not have*
02:29 20 *convicted David, then why would Saskatchewan want*
21 *to try again? I mean I think it's very clear, if*
22 *judges can see it, I think that even Saskatchewan*
23 *is going to have to be forced to admit it.*

24 ***(Clip VT34 ends)***

02:32 25 *(Adjourned at 2:30 p.m.)*



1 (Reconvened at 2:44 p.m.)

2 **(Clip VT35 played)**

3 REPORTER: How do you read into the Supreme
4 Court decision today about the possibility of
02:45 5 compensation or did they just not touch that at
6 all, it's up to the justice minister and
7 Saskatchewan's attorney general?

8 MR. HERSH WOLCH: They were not asked for
9 an opinion on compensation at all, they weren't
02:45 10 asked for an opinion on the nature of the
11 investigation, how, you know, how the police
12 conduct themselves, how the Crown conducted, they
13 weren't asked for those kind of opinions unless
14 it was relevant to the overall issue, so that it
02:45 15 was not in their contemplation, it's not their
16 concern.

17 **(Clip VT35 ends)**

18 **(Clip VT36 played)**

19 MR. HERSH WOLCH: A small point that you
02:46 20 raised earlier, the question of the attitude of
21 police and whatever else. There's been a number
22 of studies about wrongful convictions and it's
23 not that the police decide they are going to
24 frame an innocent person, that's not the way it
02:46 25 works. What happens is it's almost always the



1 same, it's high pressure to solve a crime, and
2 you get an idea in your mind and you fix on it
3 and you discard everything that's not consistent
4 with what you have began to believe and you
02:46 5 become really biased in your approach.

6 It's not that the police want
7 to convict the wrong guy, it's that they believe
8 the wrong guy is guilty and they don't have an
9 open mind to it, and that's been the case in
02:46 10 almost every wrongful conviction, and you find
11 that the witnesses who testify falsely are often
12 young people who are easily led or pressured into
13 saying what they believe the police want to hear.
14 The police don't want them to lie, the police
02:47 15 want them to say what the police want to hear is
16 what the police believe.

17 I know it -- I'm perhaps
18 drawing a fine line, but that's really the way it
19 happens.

02:47 20 **(Clip VT36 ends)**

21 **(Clip VT37 played)**

22 THE HON. KIM CAMPBELL: At the outset, I
23 would like to express my appreciation to the
24 Supreme Court of Canada for the advice it has
02:48 25 provided to me in this matter.



1 The case of Milgaard is very, a
2 very unusual and complex one. It was referred to
3 the Supreme Court because of its unique
4 characteristics. It was important to have this
02:48 5 case reviewed by the highest court in the country
6 so that I might have the benefit of the wisdom of
7 that court. That process has proved to be very
8 useful and I now have the advice of the court
9 based in part on information not previously
02:48 10 available.

11 In its advice to me, the
12 Supreme Court of Canada noted that David Milgaard
13 had the benefit of a fair trial in January, 1970.
14 The court noted that it had not been presented
02:48 15 with any probative evidence that the police acted
16 improperly in the investigation of the robbery,
17 sexual assault and murder of Gail Miller, or in
18 their interviews with any of the witnesses. Nor
19 was any evidence presented to the court that
02:49 20 there was inadequate disclosure of the Crown's
21 case.

22 Milgaard was represented by
23 able and experienced counsel. It is significant
24 to note that the court concluded that no error in
02:49 25 law or procedure was established at the trial.



1 *Indeed, the court observed that, and I quote:*

2 *"At the conclusion of the first trial*
3 *there was ample evidence upon which the*
4 *jury, which had been properly*
5 *instructed, could have returned a*
6 *verdict of guilty."*

7 *The Supreme Court has indicated*
8 *that it was not satisfied beyond a reasonable*
9 *doubt that David Milgaard was innocent of the*
10 *murder of Gail Miller, nor was the court*
11 *satisfied that David Milgaard was innocent of*
12 *that murder even on a preponderance of all of the*
13 *evidence.*

14 *The court was, however,*
15 *satisfied that there has been new evidence placed*
16 *before it which is reasonably capable of belief*
17 *and which, taken together with the evidence*
18 *adduced at trial, could reasonably be expected to*
19 *have affected the verdict of the jury.*

20 *In the result, the Supreme*
21 *Court concluded that the continued conviction of*
22 *Milgaard would amount to a miscarriage of justice*
23 *if an opportunity was not provided for a jury to*
24 *consider the fresh evidence. In light of this*
25 *conclusion, I have today signed a direction under*



1 Section 690 of the Criminal Code providing Mr.
2 Milgaard with a new trial.

3 I wish again to thank the court
4 for the extraordinary time and effort it has
02:50 5 devoted to this very difficult case. The court's
6 advice has greatly assisted me in the discharge
7 of my responsibilities under the Criminal Code as
8 Minister of Justice.

9 **(Clip VT37 ends)**

02:50 10 **(Clip VT38 played)**

11 REPORTER: ...an independent inquiry to
12 look at the broader circumstances of this case as
13 well as some sort of compensation for the 23
14 years Mr. Milgaard has spent in prison. Is that
02:51 15 premature pending --

16 THE HON. KIM CAMPBELL: I think that's
17 highly premature.

18 REPORTER: Minister, you say that the court
19 had new evidence, but really the court made its
02:51 20 decision based on more or less what you had
21 before you in the application. Ah, the first
22 time around you came to a second decision than
23 the court did. How do you explain the difference
24 in your --

02:51 25 THE HON. KIM CAMPBELL: Well, that's not



1 quite true. If you recall my announcement when I
2 referred the case to the Supreme Court of Canada,
3 I indicated that on the second application I had
4 before me evidence of a very difficult nature,
02:51 5 that I was not certain what use I could
6 appropriately make of that evidence in the light
7 of my responsibilities under Section 690 of the
8 Criminal Code, and I indicated at that time that
9 that evidence would become evident, would become
02:52 10 public in the course of the hearing before the
11 court.

12 As you know, under Section 690
13 of the Criminal Code, the process is not a trial
14 and I am not bound by the rules of evidence, and
02:52 15 it is extremely important that that process be
16 dealt with that way.

17 I have discussed this process
18 at some length with my counterpart in Great
19 Britain, the British Home Secretary, who has made
02:52 20 it clear that from his perspective, and I agree,
21 but particularly in the cases that have occurred
22 in Great Britain with the exercise of the Royal
23 Prerogative of Mercy, many remedies have been
24 granted based on evidence that would not be
02:52 25 admissible in a court of law, so the exercise of



1 the ministerial discretion under Section 690 is
2 not a trial.

3 But having said that, I found
4 that I had before me in the second application
02:52 5 evidentiary issues, some of which arose from the
6 submissions, some of which came out as a result
7 of our investigations, that I required some
8 guidance from the court in order to know what
9 kind of weight I was entitled to give them, and
02:52 10 it's been very difficult, and those of you who
11 have sat through the hearings will recognize how
12 complex and difficult those questions are, and I
13 felt that it required, first of all, a public
14 airing of the evidence that was under
02:53 15 consideration, but also the guidance of the court
16 as to what value could be given to that evidence
17 given that this was not a court of law, given
18 that this was not a process which was governed by
19 the ordinary rules of evidence, and so I'm
02:53 20 deeply, deeply grateful to the court for that,
21 but they considered evidence that was not before
22 me. They also had the ability to compel evidence
23 which I think gave them a much broader range of
24 evidence to look at.

02:53 25 REPORTER: Do you think there should be a



1 new trial?

2 THE HON. KIM CAMPBELL: I have ordered a
3 new trial and I think the Supreme Court of Canada
4 has advised that the continued conviction without
02:53 5 the opportunity to put this evidence before a
6 court would constitute a miscarriage of justice
7 and I have therefore ordered a new trial to
8 permit that to happen.

9 REPORTER: Will it be up to you or will
02:53 10 that be up to Saskatchewan?

11 THE HON. KIM CAMPBELL: It's now up to
12 Saskatchewan. I am what is known in the law as
13 *functus in this case*, I have discharged my
14 obligations and I have signed the order for a new
02:54 15 trial and it is now the responsibility of the
16 Attorney General of Saskatchewan.

17 REPORTER: What about the court's advice
18 that there be a conditional pardon if a new trial
19 goes ahead and he's found guilty?

02:54 20 THE HON. KIM CAMPBELL: Well, that's only
21 advice and it's something that's highly premature
22 to even consider that now.

23 REPORTER: There's been a lot of talk about
24 this process, some people have felt it's a waste
02:54 25 of time given the evidence that -- the



1 conflicting (unintelligible). Your department
2 has an Ottawa lawyer who is going to be looking
3 into the possibility of setting up an independent
4 tribunal?

02:54 5 THE HON. KIM CAMPBELL: No, that's not what
6 we're looking at. We're looking at improving the
7 process.

8 REPORTER: How can the process be improved?

9 THE HON. KIM CAMPBELL: There are two
02:54 10 aspects of it that I think need to be improved.
11 One is the ability of the Minister of Justice to
12 compel evidence in the process. The advantage
13 that the Supreme Court of Canada had was that
14 they were able to require people to testify.
02:54 15 Under the process as it exists now, we must seek
16 the co-operation of witnesses, and I remind you
17 again it's not a trial, so there are
18 requirements, there are no -- there's no power in
19 the minister to require someone to co-operate
02:55 20 with an investigation that results from the
21 submission, but secondly, I'm also concerned
22 about the transparency of the process. I have
23 said and I believe it's vindicated by this
24 decision that the process is eminently fair. In
02:55 25 the course of the first application when



1 *aspersions were cast on the fairness, I moved*
2 *very quickly to get outside counsel because I was*
3 *very concerned that unfair attacks were being*
4 *made on the process and the investigation as it*
02:55 5 *was being conducted by the department.*

6 *In the course of the hearing in*
7 *front of the Supreme Court of Canada, no one was*
8 *able to avail themselves, for example, of*
9 *privacy, nor -- ordinarily when we are conducting*
02:55 10 *investigations, people will only speak to us on*
11 *the basis of confidentiality, we must respect*
12 *that.*

13 *What I want to look at is a way*
14 *of making the process more transparent, making it*
02:55 15 *more visible to the public what has been done. I*
16 *believe that that would go an enormous distance*
17 *towards reassuring people of the fairness and the*
18 *thoroughness of the process and I think that the*
19 *fairness and thoroughness of the process has been*
02:56 20 *eminently vindicated by the process before the*
21 *Supreme Court of Canada, so those are two things*
22 *I am very concerned to look at.*

23 *One is the compellability of*
24 *evidence, the ability of the investigations*
02:56 25 *conducted by the Department of Justice to require*



1 people to participate, and I'm not sure what the
2 recommendations will be there, and secondly, a
3 clearer view of what the confidentiality
4 requirements are and how we can make the record
02:56 5 public in a way that would assure the public
6 these things had been dealt with as thoroughly
7 and fairly as they in fact are dealt with.

8 REPORTER: The Canadian Bar Association has
9 suggested that maybe the Supreme Court is not the
02:56 10 best avenue for this, maybe it would be better to
11 set up some sort of an independent body headed up
12 by a former justice, that way you wouldn't be
13 eating up valuable sitting days.

14 THE HON. KIM CAMPBELL: Well, first of all,
02:56 15 let me point out that this process in front of
16 the Supreme Court of Canada was highly unusual.
17 It was not a trial and it was not an appeal, it
18 was a reference to the Supreme Court to provide
19 me with a legal opinion, because I had before me
02:57 20 evidence of a very difficult nature. Determining
21 whether that evidence could bring me to a
22 conclusion that there had been a miscarriage of
23 justice such as to trigger any of the remedies
24 under Section 690 was not clear to me, it was a
02:57 25 very, very difficult question to answer, and



1 there were a variety of reasons why I went to the
2 Supreme Court of Canada.

3 That is highly unusual and
4 certainly I think there are a number of major
02:57 5 cases in Canadian history, I think of the
6 Truscott case and the Coffin case, where these
7 kinds of issues have gone before the Supreme
8 Court in a variety of different forms, but it
9 would be quite wrong to challenge the process
02:57 10 based on this particular instance because it was
11 a highly unusual case.

12 I think that by making the
13 process work better in terms of putting more
14 power in the hands of the minister in conducting
02:57 15 an investigation and by making it more
16 transparent, I think we can make it work better,
17 but it is important to understand that this is
18 not and cannot become simply another step of
19 appeal.

02:58 20 This remedy is sought by people
21 who, first of all, have been convicted, who have
22 exhausted all avenues of appeal and who believe,
23 as a result of new evidence, that it is
24 appropriate to remit this to a lower court. I
02:58 25 receive about 30 of these applications a year.



1 Many of them are simply seeking me to substitute
2 my view for that of the jury. Others, such as
3 the Nepoose case, are fairly straightforward and
4 trigger a remedy quite quickly.

02:58 5 The nature of the submissions
6 in this case is highly unusual, was very complex
7 and required that I undertake the process that I
8 did, but that's highly unusual.

9 (Question and answer in French)

02:58 10 TRANSLATOR: Miss Campbell now saying it's
11 up to the Attorney General in Saskatchewan to
12 decide what happens next in this case. Remember
13 the Supreme Court held open the possibility that
14 the Attorney General of Saskatchewan could enter
02:59 15 a stay in the proceedings, which means that there
16 would be no trial of David Milgaard again in the
17 case of Gail Miller.

18 (Question and answer in French)

19 TRANSLATOR: Miss Campbell now saying that
02:59 20 she has asked for advice on how Section 690 of
21 the Criminal Code should work, that in fact this
22 is the section under which this Milgaard review
23 is conducted and how she is now ordering a new
24 trial. She says the Milgaard case is unique and
03:00 25 not normal at all and --



1 (Question and answer in French)

2 TRANSLATOR: The question was whether there
3 should be a more independent tribunal set up and
4 she says she didn't want to talk about that now.

5 (Question and answer in French)

6 TRANSLATOR: Miss Campbell is saying that a
7 trial would be a definitive response to the
8 evidence that was put before the Supreme Court,
9 the new evidence that has come up in this case,
03:01 10 evidence that pointed to a person named Larry
11 Fisher who was a serial rapist who had served
12 time in prison, being in the area at the time of
13 Gail Miller's death. This was not known at the
14 time of the trial of David Milgaard.

15 (Question and answer in French)

16 TRANSLATOR: It is up to the Attorney
17 General in Saskatchewan to decide whether there
18 should be a new trial.

19 REPORTER: What you said in French, I
03:02 20 believe, that there may still be some utility in
21 a trial in that the guilt or innocence of David
22 Milgaard might still -- can you repeat that in
23 English?

24 THE HON. KIM CAMPBELL: I just said that
03:02 25 ideally it would be nice to have definitive



1 answers. Whether it is possible to obtain them
2 through a new trial is not something that I'm in
3 a position to determine, that is a question that
4 will have to be evaluated by the Attorney General
03:02 5 of Saskatchewan, but I think in general, ideally
6 it would be nice to have answers, and I remind
7 you that there were comments made about another
8 individual that might possibly be clarified as
9 well, but that is up to the Attorney General of
03:02 10 Saskatchewan, to determine whether it is possible
11 to do this and whether it is in the best interest
12 of public policy.

13 REPORTER: You say ideally, but it is so
14 many years later.

03:03 15 THE HON. KIM CAMPBELL: Well, I think -- I
16 mean, I don't think that's -- it's not a question
17 of opinion, ideally we would all like to know and
18 to have answers. The question is whether it's
19 possible at this stage to have those answers or
03:03 20 not is one that the Attorney General of
21 Saskatchewan will have to address himself to and
22 I'm not in a position to know what the
23 appropriate answer would be to that question.

24 REPORTER: Have you spoken to Mr. Mitchell
03:03 25 today?



1 THE HON. KIM CAMPBELL: I spoke to him and
2 advised him of my position and what I would be
3 doing as a courtesy. He happens, in fact, to be
4 in Ottawa, so --

03:03 5 REPORTER: Given what the high court said
6 about the original trial, does it make it
7 unlikely now that the federal government will
8 call an inquiry into the whole provincial justice
9 system?

03:03 10 THE HON. KIM CAMPBELL: Well, I don't see,
11 from this judgment, any indication that such an
12 inquiry would be appropriate. I think what the
13 court has gone to great pains to say is that it
14 has seen nothing, no probative evidence that
03:03 15 indicates any impropriety in the way the trial
16 was carried out. They have said that in fact the
17 evidence before the jury, the jury was properly
18 instructed, was sufficient to justify the
19 verdict. They are talking about new evidence
03:04 20 that was not available at the time and they have
21 not indicated what that, what the weight of that
22 evidence would be, but they have said that it
23 could possibly affect the decision of a jury and
24 therefore fairness requires that such evidence be
03:04 25 put before a jury and that is the basis on which



1 they've made their recommendation and on which
2 I've ordered a new trial.

3 REPORTER: Just to return to the question
4 of compensation. Would it take a verdict of
03:04 5 innocent in a new trial before you would consider
6 compensation?

7 THE HON. KIM CAMPBELL: Well, I think
8 that's highly, highly premature even to think of
9 that, we have not had a resolution of this case,
03:04 10 and I would remind you, I mean, I would just
11 refer you again to the wording of the court's
12 judgment that --

13 REPORTER: But if fresh evidence is the
14 reason for making its recommendation, what did it
03:04 15 have that was different than the evidence or the
16 materials that were compiled to you by your
17 departmental lawyers that made you come to this
18 decision?

19 THE HON. KIM CAMPBELL: Well, there were a
03:04 20 variety of things that were before the court that
21 did not come to me in the first application, they
22 came to me in the second application, and the
23 material with respect to, for example, to Mr.
24 Fisher being one of them, that it was before me
03:05 25 in the second application, but I felt it was



1 important to have some very careful legal
2 guidance in how that was to be dealt with.

3 There was other evidence also
4 that came forward in the second application. I
5 don't want to get into specific points of detail
6 just as the court has not gotten into specific
7 points of detail as to the evidence that led them
8 to draw their conclusions, but there certainly
9 was a considerable amount of new evidence, some
10 of which was of a sort that it was very unclear
11 what to make of it, and I remind you again that I
12 don't have the simple criteria of what would be
13 admissible in a court of law because the question
14 to me is not is there evidence that could justify
15 necessarily a different verdict, but is there
16 evidence that would suggest that the conviction
17 was a miscarriage of justice.

18 Now, the court has said that
19 there was not a miscarriage of justice in the
20 initial conviction, what they have said is that
21 the continued conviction would be a miscarriage
22 of justice if new evidence was not able to be put
23 before a jury, and it's to avoid that miscarriage
24 of justice that I've ordered the new trial.

25 REPORTER: Does this new trial overturn the



1 conviction in the first trial, the ordering of a
2 new trial?

3 THE HON. KIM CAMPBELL: Well, I think it's
4 interesting, the court used the expression to
03:06 5 quash a conviction. That is not the power that
6 is available to me under Section 690, but I think
7 it probably has a similar effect and I think
8 that's something we should ask the Attorney
9 General of Saskatchewan. I've ordered the new
03:06 10 trial.

11 REPORTER: Does that vacate his previous
12 conviction?

13 THE HON. KIM CAMPBELL: That's a legal
14 question that I really don't know the answer to,
03:06 15 the exact technical working of that. I think
16 it's implied, but I think the Acting Attorney
17 General of Saskatchewan has a better sense.

18 REPORTER: So you now have -- you now have
19 a man in prison who is not convicted of a crime?

03:06 20 THE HON. KIM CAMPBELL: But he's subject to
21 a charge, yes, he is.

22 REPORTER: Ms. Campbell, when Canadians
23 hear, though, that you've ordered a new trial,
24 that obviously, or people who just follow this on
03:07 25 a general basis, it obviously casts some doubt on



1 *Milgaard's conviction, the original conviction,*
2 *even though the Supreme Court says the old*
3 *evidence stays firm. Doesn't that throw another*
4 *black mark yet on the Canadian justice system?*

03:07 5 *THE HON. KIM CAMPBELL: On the contrary. I*
6 *believe that the court has made it very, very*
7 *clear that David Milgaard, it has said it*
8 *explicitly, that he had a fair trial in 1970. I*
9 *think that most Canadians can understand that in*
03:07 10 *any kind of criminal process, after the process*
11 *is finished new evidence may come to light that*
12 *was not available to be considered before.*
13 *Whether that new evidence is sufficient to change*
14 *the verdict or not the court does not say, but*
03:07 15 *fairness requires that a method be found to*
16 *consider it, but this does not mean that the*
17 *original process was not fair, it simply means*
18 *that there might have been evidence adduced that*
19 *could alter the view of the jury and fairness*
03:07 20 *requires us now when we are aware of it to enable*
21 *it to be considered.*

22 *REPORTER: So that means the whole system*
23 *works?*

24 *THE HON. KIM CAMPBELL: I think it does, I*
03:08 25 *think it vindicates it, and think that -- in*



1 fact, I have seen some extraordinary comments
2 about the process in the papers, and people speak
3 about the Donald Marshall case, for example, this
4 is precisely the process that gave Donald
03:08 5 Marshall his freedom, it is a process that works
6 well, it is a process that is not meant to be a
7 substitute for an appeal court, it is a process
8 that works actually relatively expeditiously.

9 REPORTER: 23 years?

03:08 10 THE HON. KIM CAMPBELL: Well, this case was
11 resolved fairly quickly when the submissions were
12 complete. The submissions were made over a
13 period of time and in order to give the full
14 benefit of the doubt to Mr. Milgaard, each
03:08 15 submission that was made was given full
16 investigation. It is a process that works. I
17 think it is important that it not simply become
18 an automatic level of appeal for everyone who
19 disagrees with their verdict and that is why it
03:08 20 is very important that it be dealt with
21 carefully, that it is not simply another step of
22 appeal. It's an extraordinary remedy, but it is
23 one that has worked to great effect.

24 REPORTER: Ms. Campbell, the Supreme Court
03:09 25 moved, as you've noted, very, very quickly to



1 deal with this. How important now is it that the
2 next step happen just as quickly in terms of
3 justice for everyone involved in the case?

4 THE HON. KIM CAMPBELL: Well, the courts in
03:09 5 Saskatchewan will be subject to the, what we may
6 call the common law rule that has come down about
7 expeditiously dealing with charges under the
8 Criminal Code, so they will have their time
9 frames set out for them and I believe that they
03:09 10 will act appropriately, I have every confidence
11 they will act appropriately.

12 **(Clip VT38 ends)**

13 **(Clip VT39 played)**

14 MS. WENDY MESLEY: One by one the prison
03:09 15 doors that led to David Milgaard's cell began
16 swinging open today. First, the Supreme Court
17 ruled this morning that his murder conviction
18 should be quashed in light of new evidence. It
19 recommended Justice Minister Kim Campbell order a
03:10 20 new trial. She took that advice this afternoon.

21 The man who now holds the last
22 key to Milgaard's freedom is Saskatchewan
23 Attorney General Bob Mitchell. He will decide
24 whether to hold a new trial or he can order a
03:10 25 stay in the proceedings which would set Milgaard



1 free. This afternoon Mitchell said he would
2 allowance his decision on Thursday.

3 Joining us now from Winnipeg
4 are David Milgaard's mother, Joyce Milgaard, and
03:10 5 his lawyer, David Asper.

6 Mrs. Milgaard, it looks like
7 one way or another your son is about to be free.
8 How does it feel that the struggle is over?

9 MRS. JOYCE MILGAARD: It's -- it's
03:10 10 incredible. It's been such a see-saw type of an
11 event, you are up one moment and down the next,
12 but it really does look like we're on an up.

13 MS. WENDY MESLEY: And yet it is possible,
14 either through a new trial or a stay of
03:10 15 proceedings, that doesn't say whether he's guilty
16 or innocent. David Asper, let me ask you, are
17 you prepared to live with that, that he could be
18 set free without it ever being clear whether the
19 courts think he's guilty or innocent?

03:11 20 MR. DAVID ASPER: Well, I think that
21 there's a very important issue that you have to
22 remember, which is that in ordering the new
23 trial, the Supreme Court has concluded that there
24 is new evidence not available at the trial which
03:11 25 could have affected the verdict of the jury.



1 Now, as a practical aspect of
2 this whole case, courts are loath to re-open
3 cases unless the evidence is so powerful that it
4 not only could affect the verdict, but is likely
03:11 5 to affect the verdict, so we take solace in
6 knowing that we've put our best foot forward and
7 we believe that we've established that David is
8 innocent and we believe that a new trial would
9 confirm that.

03:11 10 MS. WENDY MESLEY: What -- so is that your
11 preferred option now, you do want that trial?

12 MR. DAVID ASPER: Well, we've said to
13 Saskatchewan, if you are going to stay
14 proceedings, you can't stay proceedings by
03:11 15 default, and we call on Saskatchewan, if they are
16 going to stay proceedings, to do so on the basis
17 that there is no evidence linking David Milgaard
18 to this murder, no credible evidence whatsoever.

19 MS. WENDY MESLEY: Yeah, but you have no
03:12 20 guarantee of what the Attorney General is going
21 to say, he could just stay proceedings and say we
22 never know. How do you feel about that, Mrs.
23 Milgaard?

24 MRS. JOYCE MILGAARD: I would really, at
03:12 25 that point, be demanding a new trial because I



1 think we have the right -- I mean, my son has a
2 right, the Supreme Court says, to a trial and to
3 be in front of a jury. If they are not prepared
4 to stay that conviction, and to stay it as my
03:12 5 lawyer has just explained, then I think that we
6 have that right to the trial.

7 There is an awful lot of things
8 that didn't come out at the Supreme Court. My
9 lawyer kept telling me the inquiry will bring
03:12 10 these things out, but, you know, when I sit and
11 listen to almost what appears to be a whitewash
12 of what went on in Saskatchewan, I'm not prepared
13 to sit still for that, and I guess our whole
14 family is too much of fighters to stand by and
03:13 15 say that Saskatchewan can just quickly slide away
16 and wash it all over and say, well, you know, we
17 don't know and this type of thing. We know he's
18 innocent.

19 And I know something else, the
03:13 20 Gail Miller family, they were very courageous in
21 coming forward and suggesting that this case be
22 re-opened. It would be very saddening indeed
23 that if the final thing should be a whitewash and
24 should not very clearly establish what really
03:13 25 went on and what happened to her.



1 MS. WENDY MESLEY: Your son said this
2 morning that the people who did this to him, who
3 kept him in prison for 23 years have to be held
4 accountable, a very strong suggestion throughout
03:13 5 the day, that you will eventually be seeking
6 compensation for his 23 years in jail. Is that
7 clear.

8 MRS. JOYCE MILGAARD: The compensation that
9 I would like, and I will be very clear about it,
03:14 10 is to see the accountability of the people that
11 wronged our family and my son. That's -- that's
12 --

13 MS. WENDY MESLEY: What does that mean, is
14 that money, or is that saying they are sorry?

03:14 15 MRS. JOYCE MILGAARD: That could be, to me,
16 just saying you're sorry. I have never been
17 interested in money, I have been interested in
18 clearing my son's name, and that is the prime
19 object in this whole thing is that someone sits
03:15 20 down and says "we're sorry, when we knew about
21 Larry Fisher we should have, at that time,
22 re-opened the case, and we didn't do that". That
23 would make me feel really good.

24 MR. DAVID ASPER: I might add that David
03:15 25 himself has been very vocal all along the way in



1 asserting that part of his case has got to be
2 beyond David Milgaard, to the extent that what he
3 has had to go through in terms of trying to get
4 the case re-opened and get redress, shouldn't
03:15 5 happen to somebody else, and so he's been very
6 forward-looking in that respect. And to the
7 extent that --

8 MS. WENDY MESLEY: Well what do you plan as
9 a lawyer; should there be another step, legally,
03:15 10 to tackle the legal system?

11 MR. DAVID ASPER: Well, I think the first
12 step is to hear what Saskatchewan is going to do.
13 You know, if there's going to be a new trial,
14 that's going to be our next step. If there's not
03:16 15 going to be a new trial, I suppose we'll have to
16 hear how it is couched, but I think that, in a
17 broad sense, the next step, as the Minister said
18 in her news conference, is that the current
19 system -- and I guess I disagree with her a
03:16 20 little bit on how it works now -- but I do agree
21 that it needs refining, and if that can come out
22 of the David Milgaard case, I think that's a
23 very, very important step that we have taken, and
24 I know that it's something that David has been
03:16 25 concerned about from the very outset.



1 MS. WENDY MESLEY: All right. Well thank
2 you very much, David Asper and Joyce Milgaard,
3 for being with us today, and I guess we'll find
4 out Thursday the final step. Thanks so much for
03:16 5 being with us.

6 (Clip VT39 ends)

7 (Clip VT40 played)

8 NARRATOR: ... is in Stony Mountain
9 Penitentiary in Manitoba. That is Bob Mitchell
03:17 10 now, coming through the door, the Saskatchewan
11 Attorney General, taking his place. And let's go
12 live, now, to Regina, Saskatchewan and Attorney
13 General Bob Mitchell.

14 MR. BOB MITCHELL: The office of the
03:17 15 Attorney General of Saskatchewan has, after a
16 full review of the situation, decided that the
17 Crown will enter a stay of proceedings in the
18 murder case against David Milgaard.

19 Given the decision of the
03:17 20 Supreme Court of Canada earlier this week we have
21 decided it is not in the best interests of the
22 people of Saskatchewan, or of the justice system,
23 to proceed with this case.

24 The Supreme Court's ruling said
03:17 25 that, while it did not find David Milgaard



1 innocent of the rape and murder of Gail Miller,
2 it feels further evidence, which might or might
3 not impact a jury decision, has been brought to
4 light and should be examined.

03:17 5 Following that finding, Federal
6 Justice Minister Kim Campbell has ordered a new
7 trial for Milgaard. We do not believe that a new
8 trial is feasible. First of all, the evidence is
9 23 years old. Some witnesses have died and some,
03:18 10 as the Supreme Court hearing shows, just don't
11 remember what happened.

12 As well, the Supreme Court has
13 decided that Mr. Milgaard has served his term,
14 stating in effect that, if he were convicted, the
03:18 15 Federal Justice Minister should pardon him
16 immediately. We have to ask ourself why the
17 people of Saskatchewan should pay for a trial
18 which cannot, in any sense, result in punishment
19 of Mr. Milgaard if he was convicted again.

03:18 20 In making today's announcement
21 we feel we have to make a couple of points
22 crystal clear. First, the government will not
23 order a commission of inquiry into the Milgaard
24 case. In the opinion of the Supreme Court, Mr.
03:18 25 Milgaard was given a fair trial after a competent



1 *police investigation, and was justly convicted on*
2 *the evidence presented. I do not see what an*
3 *inquiry could possibly establish that the Supreme*
4 *Court has not already done.*

03:19 5 *Secondly, we will not be*
6 *offering any compensation to David Milgaard. It*
7 *is, of course, his right to seek legal recourse*
8 *against the government, but we will oppose any*
9 *such claim.*

03:19 10 *The bottom line is that there*
11 *is nothing that was brought before the Supreme*
12 *Court which convinced even one Justice that Mr.*
13 *Milgaard is either innocent or a victim of a*
14 *miscarriage of justice. Anyone who would suggest*
03:19 15 *otherwise has no understanding of what the*
16 *Supreme Court said.*

17 *I have asked the Public*
18 *Prosecutions Branch to determine whether or not*
19 *there is sufficient evidence to bring a charge of*
03:19 20 *murder in respect of the death of Gail Miller*
21 *against any other individual. Like the Supreme*
22 *Court, they do not appear to think there is, but*
23 *they will continue their inquiry and will report*
24 *back to me.*

03:20 25 *In conclusion, I want to offer*



1 my sympathies to the family of Gail Miller. We
2 would have liked to be able to allow you to close
3 that ugly and heart-rending chapter of your lives
4 but, unfortunately, we cannot.

03:20 5 This case has not been an easy
6 one from the point of view of the fair and
7 judicious application of justice. I hope that
8 today's announcement will finally put it to rest.

9 **(Clip VT40 ends)**

03:20 10 MS. MONAR ENWEANI: Mr. Commissioner, that
11 appears to be an appropriate spot in the video
12 tape collection to break.

13 COMMISSIONER MacCALLUM: Thank you.

14 MS. MONAR ENWEANI: Thank you.

03:20 15 *(Adjourned at 3:20 p.m.)*

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